



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, and notices of public hearings on regulations.

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

An agency wishing to adopt, amend, or repeal regulations must first publish in the *Virginia Register* a notice of intended regulatory action; a basis, purpose, substance and issues statement; an economic impact analysis prepared by the Department of Planning and Budget; the agency's response to the economic impact analysis; a summary; a notice giving the public an opportunity to comment on the proposal; and the text of the proposed regulation.

Following publication of the proposal in the *Virginia Register*, the promulgating agency receives public comments for a minimum of 60 days. The Governor reviews the proposed regulation to determine if it is necessary to protect the public health, safety and welfare, and if it is clearly written and easily understandable. If the Governor chooses to comment on the proposed regulation, his comments must be transmitted to the agency and the Registrar no later than 15 days following the completion of the 60-day public comment period. The Governor's comments, if any, will be published in the *Virginia Register*. Not less than 15 days following the completion of the 60-day public comment period, the agency may adopt the proposed regulation.

The Joint Commission on Administrative Rules (JCAR) or the appropriate standing committee of each house of the General Assembly may meet during the promulgation or final adoption process and file an objection with the Registrar and the promulgating agency. The objection will be published in the *Virginia Register*. Within 21 days after receipt by the agency of a legislative objection, the agency shall file a response with the Registrar, the objecting legislative body, and the Governor.

When final action is taken, the agency again publishes the text of the regulation as adopted, highlighting all changes made to the proposed regulation and explaining any substantial changes made since publication of the proposal. A 30-day final adoption period begins upon final publication in the *Virginia Register*.

The Governor may review the final regulation during this time and, if he objects, forward his objection to the Registrar and the agency. In addition to or in lieu of filing a formal objection, the Governor may suspend the effective date of a portion or all of a regulation until the end of the next regular General Assembly session by issuing a directive signed by a majority of the members of the appropriate legislative body and the Governor. The Governor's objection or suspension of the regulation, or both, will be published in the *Virginia Register*. If the Governor finds that changes made to the proposed regulation have substantial impact, he may require the agency to provide an additional 30-day public comment period on the changes. Notice of the additional public comment period required by the Governor will be published in the *Virginia Register*.

The agency shall suspend the regulatory process for 30 days when it receives requests from 25 or more individuals to solicit additional public comment, unless the agency determines that the changes have minor or inconsequential impact.

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation,

unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

A regulatory action may be withdrawn by the promulgating agency at any time before the regulation becomes final.

FAST-TRACK RULEMAKING PROCESS

Section 2.2-4012.1 of the Code of Virginia provides an exemption from certain provisions of the Administrative Process Act for agency regulations deemed by the Governor to be noncontroversial. To use this process, Governor's concurrence is required and advance notice must be provided to certain legislative committees. Fast-track regulations will become effective on the date noted in the regulatory action if no objections to using the process are filed in accordance with § 2.2-4012.1.

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **26:20 V.A.R. 2510-2515 June 7, 2010**, refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

The *Virginia Register of Regulations* is published pursuant to Article 6 (§ 2.2-4031 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia.

Members of the Virginia Code Commission: **John S. Edwards**, Chairman; **Bill Janis**, Vice Chairman; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **Jane M. Roush**; **Patricia L. West**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

November 2010 through December 2011

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
27:5	October 20, 2010	November 8, 2010
27:6	November 3, 2010	November 22, 2010
27:7	November 16, 2010 (Tuesday)	December 6, 2010
27:8	December 1, 2010	December 20, 2010
27:9	December 14, 2010 (Tuesday)	January 3, 2011
27:10	December 28, 2010 (Tuesday)	January 17, 2011
27:11	January 12, 2011	January 31, 2011
27:12	January 26, 2011	February 14, 2011
27:13	February 9, 2011	February 28, 2011
27:14	February 23, 2011	March 14, 2011
27:15	March 9, 2011	March 28, 2011
27:16	March 23, 2011	April 11, 2011
27:17	April 6, 2011	April 25, 2011
27:18	April 20, 2011	May 9, 2011
27:19	May 4, 2011	May 23, 2011
27:20	May 18, 2011	June 6, 2011
27:21	June 1, 2011	June 20, 2011
27:22	June 15, 2011	July 4, 2011
27:23	June 29, 2011	July 18, 2011
27:24	July 13, 2011	August 1, 2011
27:25	July 27, 2011	August 15, 2011
27:26	August 10, 2011	August 29, 2011
28:1	August 24, 2011	September 12, 2011
28:2	September 7, 2011	September 26, 2011
28:3	September 21, 2011	October 10, 2011
28:4	October 5, 2011	October 24, 2011
28:5	October 19, 2011	November 7, 2011
28:6	November 2, 2011	November 21, 2011
28:7	November 15, 2011 (Tuesday)	December 5, 2011

*Filing deadlines are Wednesdays unless otherwise specified.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

STATE BOARD OF CORRECTIONS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Corrections intends to consider amending the following regulation: **6VAC15-26, Regulations for Human Subject Research**. The purpose of the proposed action is to further define and clarify requirements for obtaining informed consent for human subject research and increase efficiency in the committee review process. Amending the regulation should ensure compliance with legislatively mandated requirements.

The agency does not intend to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: §§ 53.1-5 and 53.1-5.1 of the Code of Virginia.

Public Comment Deadline: December 8, 2010.

Agency Contact: John Britton, Director, Research and Management Services, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3268 ext: 1241, FAX (804) 674-3590, or email john.britton@vadoc.virginia.gov.

VA.R. Doc. No. R11-2246; Filed October 8, 2010, 3:44 p.m.

Withdrawal of Notice of Intended Regulatory Action

The Board of Corrections has **WITHDRAWN** the Notice of Intended Regulatory Action for **6VAC15-26, Regulations for Human Subject Research**, which was published in 17:26 VA.R. 3649 August 27, 2001. The Board of Corrections has submitted a new Notice of Intended Regulatory Action for 6VAC15-26, which is published in this issue of the Virginia Register of Regulations.

Agency Contact: John Britton, Director, Research and Management Services, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3268 ext: 1241, FAX (804) 674-3590, or email john.britton@vadoc.virginia.gov.

VA.R. Doc. No. R01-267; Filed October 18, 2010, 2:46 p.m.



TITLE 11. GAMING

CHARITABLE GAMING BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Charitable Gaming Board intends to consider promulgating the following regulation: **11VAC15-40, Charitable Gaming Regulations**, and repealing **11VAC15-22, Charitable Gaming Rules and Regulations**, and **11VAC15-31, Supplier Regulations**. The purpose of the proposed action is to consolidate chapters 11VAC15-22 and 11VAC15-31 into a new chapter, 11VAC15-40, Charitable Gaming Regulations, that will consist of three sections pertaining to (i) charitable gaming organizations and the conduct of charitable gaming, (ii) charitable gaming suppliers, and (iii) electronic games of chance systems.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register.

Statutory Authority: § 18.2-340.15 of the Code of Virginia.

Public Comment Deadline: December 8, 2010.

Agency Contact: Andres Alvarez, Director, Division of Consumer Protection, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 225-3821, FAX (804) 371-7479, TTY (800) 828-1120, or email andres.alvarez@vdacs.virginia.gov.

VA.R. Doc. No. R11-2560; Filed October 15, 2010, 9:49 a.m.

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Title of Regulation: **4VAC20-1060. Pertaining to Establishment of Restricted Area -- Dominion Power/Nuclear Power Station (amending 4VAC20-1060-10, 4VAC20-1060-20, 4VAC20-1060-30).**

Statutory Authority: §§ 28.2-201 and 28.2-106.2 of the Code of Virginia.

Effective Date: October 29, 2010.

Agency Contact: Jane Warren, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendments enlarge the restricted area adjacent to the James River, Surry Nuclear Power Plant to include the discharge canal.

CHAPTER 1060

PERTAINING TO ~~ESTABLISHMENT~~ ENLARGEMENT OF ~~ESTABLISHED~~ RESTRICTED AREA -- DOMINION POWER/NUCLEAR POWER STATION

4VAC20-1060-10. Purpose.

The purpose of this ~~regulation chapter~~ is to enhance the physical security of the facility and is part of a comprehensive plan to protect the public, environment, and economic interests from sabotage and other subversive acts, accidents, or incidents of a similar nature. (See Hog Island Quad Map outlining the location of the restricted area.)

The ~~regulation delineates the identical areas already restricted by current federal regulation.~~ The adoption of this ~~regulation chapter~~ simply affords the Virginia Marine Police the authority to enforce Virginia law that prohibits entrance into the restricted areas.

4VAC20-1060-20. Definitions.

A. Pursuant to § 28.2-106.2 of the Code of Virginia, the following restricted area is established adjacent to the James River, Surry Nuclear Power Plant:

The Area. The waters within an area beginning at Mean High Water on the shore at latitude 37°08'59.4"N, longitude 76°40'15.5"W; thence to the following points creating a 500 yard arc: latitude 37°08'58.8"N, longitude 76°40'06"W; latitude 37°09'03.1"N, longitude 76°39'59.4"W; latitude 37°09'06.9"N, longitude 76°39'54.1"W; latitude 37°09'12.8"N, longitude 76°39'48"W; latitude 37°09'18.6"N, longitude 76°39'48"W; latitude 37°09'25.1"N, longitude 76°39'48.3"W; latitude 37°09'32.3"N, longitude 76°39'50.1"W; latitude 37°09'37.2"N, longitude 76°39'53.1"W; latitude 37°09'40"N, longitude 76°39'56.6"W; latitude 37°09'37.2"N, longitude 76°39'53.1"W; latitude 37°09'43.4"N, longitude 76°40'03.4"W; thence to a point on shore at Mean High Water in position; latitude 37°09'42.7"N, longitude 76°40'27.1"W, and the entire discharge canal from the jetty at the mouth of the discharge canal to the circulating water discharge pipes at the head of the discharge canal. The geographic coordinates for this are 37°10'18.3"N, 76°42'22.5"W to 37°10'00.8"N, 76°41'51.3"W and include the entire width of the canal.

B. No vessel or persons shall enter the restricted area without the permission of the Virginia Marine Police. Law-enforcement vessels, United States military vessels and vessels of the Dominion Power/Surry Nuclear Power Plant are exempt from the provisions of this ~~regulation chapter~~.

4VAC20-1060-30. Penalty.

A violation of this ~~regulation chapter~~ is a Class 1 misdemeanor.

VA.R. Doc. No. R11-2639; Filed October 28, 2010, 10:11 a.m.

TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

STATE CORPORATION COMMISSION

Forms

REGISTRAR'S NOTICE: The following forms used in administering the regulation have been filed by the State Corporation Commission. The forms are not being published; however, the name of each form is listed below and is a

hyperlink to the actual form. Online users of this issue of Virginia Register of Regulations (<http://register.dls.virginia.gov/vol27/iss05/v27i05.pdf>) may access the form by clicking on the name of the form. Users of the Virginia Administrative Code online at <http://regulations.legis.virginia.gov> may access the forms on the date this issue of the Virginia Register of Regulations is published. The forms are also available for public inspection at the State Corporation Commission (contact information below) and at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: 10VAC5-210. Motor Vehicle Title Lending.

Agency Contact: Nicholas C. Kyrus, Deputy Commissioner, Corporate Structure and Research - Bureau of Financial Institutions, State Corporation Commission, Tyler Building, 8th Floor, 1300 East Main Street, P.O. Box 640, Richmond, VA 23218-0640, telephone (804) 371-9657, FAX (804) 371-9416, email nick.kyrus@scc.virginia.gov.

FORMS (10VAC5-210)

~~Personal Financial Report and Disclosure Statement, CCB-1123 (rev. 3/08).~~

~~Limited Personal Financial Report and Disclosure Statement, CCB-1143 (rev. 3/08).~~

[Personal Financial Report and Disclosure Statement, CCB-1123 \(rev. 10/10\).](#)

[Limited Personal Financial Report and Disclosure Statement, CCB-1143 \(rev. 10/10\).](#)

[Depository Institution Authorization Form, CCB-1149 \(rev. 12/04\).](#)

~~Employment and Business Affiliation Disclosure Form, CCB-1150 (rev. 3/08).~~

~~Application for a Motor Vehicle Title Lender License pursuant to Chapter 21 of Title 6.1 of the Code of Virginia, CCB-5523 (eff. 6/10).~~

~~Motor Vehicle Title Lender Surety Bond pursuant to § 6.1-484 of the Code of Virginia, CCB-5524 (eff. 6/10).~~

~~Application for an Additional Office or Relocation of an Existing Office pursuant to Chapter 21 of Title 6.1 of the Code of Virginia, CCB-5525 (eff. 6/10).~~

~~Application for Permission to Acquire Control of a Motor Vehicle Lender License pursuant to § 6.1-488 of the Code of Virginia, CCB-5526 (eff. 6/10).~~

~~Application to Conduct the Business of Motor Vehicle Title Lending and Other Business at the Same Location, CCB-5527 (eff. 7/10).~~

[Employment and Business Affiliation Disclosure Form, CCB-1150 \(rev. 10/10\).](#)

[Application for a Motor Vehicle Title Lender License pursuant to Chapter 22 of Title 6.2 of the Code of Virginia, CCB-5523 \(rev. 10/10\).](#)

[Motor Vehicle Title Lender Surety Bond pursuant to § 6.2-2204 of the Code of Virginia, CCB-5524 \(rev. 10/10\).](#)

[Application for an Additional Office or Relocation of an Existing Office pursuant to Chapter 22 of Title 6.2 of the Code of Virginia, CCB-5525 \(rev. 10/10\).](#)

[Application for Permission to Acquire Control of a Motor Vehicle Lender License pursuant to § 6.2-2208 of the Code of Virginia, CCB-5526 \(rev. 10/10\).](#)

[Application to Conduct the Business of Motor Vehicle Title Lending and Other Business at the Same Location, CCB-5527 \(rev. 10/10\).](#)

VA.R. Doc. No. R11-2631; Filed October 20, 2010, 5:09 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Extension of Emergency Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (adding 12VAC30-50-131).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200; adding 12VAC30-80-96).

12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-380).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Dates: October 29, 2009, through April 28, 2011.

Pursuant to § 2.2-4011 of the Code of Virginia, the Department of Medical Assistance Services requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act. The emergency regulations were published in 26:6 VA.R. 651-661 November 23, 2009 (<http://register.dls.virginia.gov/vol26/iss06/v26i06.pdf>).

The regulation provides operating authority to the Department of Medical Assistance Services for the implementation of new Part C services for preschool children. If the emergency regulation lapses, DMAS will have no state authority to

Regulations

continue the provision of these significant new services to preschool children.

The emergency regulation was effective on October 29, 2009, and is scheduled to expire on October 28, 2010. The Notice of Intended Regulatory Action comment period ended in late November, and the Office of the Attorney General completed its review in early February. The proposed regulation was submitted to the Governor's office for review in May. Once the proposed regulation is approved by the Governor, it must be published for a 60-day public comment period and made permanent by a follow up final regulation that includes a 30-day post publication waiting period before the regulation goes into effect. Given this timeline, the regulatory process cannot be completed by October 28, 2010, the expiration date of the emergency regulation.

The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through April 28, 2011.

Agency Contact: Molly Carpenter, Child and Maternal Health Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-1493, FAX (804) 225-3961, or email molly.carpenter@dmas.virginia.gov.

VA.R. Doc. No. R10-2080; Filed October 27, 2010, 5:02 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Department of Medical Assistance Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Medical Assistance Services will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-40).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Effective Date: December 8, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Summary:

This regulatory action amends 12VAC30-80-40 for the estimated acquisition cost payment methodology for Medicaid fee-for-service pharmacy services from average wholesale price (AWP) minus 13.1% to the previous rate of AWP minus 10.25%. This modification is required to comply with Item 297 SSS of the 2010 Appropriation Act, which requires DMAS to amend the State Plan for Medical Assistance to reinstate the maximum reimbursement for pharmaceutical products dependent upon the availability of enhanced federal match dollars provided for in the American Recovery and Reinvestment Act (ARRA - P.L. 111-5). The increased federal match percentage has been provided to the Commonwealth through June 30, 2011. Therefore, effective October 1, 2010, Virginia will reverse the budget reduction that was implemented July 1, 2010, and revert to the previous methodology of AWP minus 10.25%.

12VAC30-80-40. Fee-for-service providers: pharmacy.

Payment for pharmacy services shall be the lowest of items 1 through 5 (except that items 1 and 2 will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.512(c) if the brand cost is greater than the Centers for Medicare and Medicaid Services (CMS) upper limit of VMAC cost) subject to the conditions, where applicable, set forth in subdivisions 6 and 7 of this section:

1. The upper limit established by the CMS for multiple source drugs pursuant to 42 CFR 447.512 and 447.514, as determined by the CMS Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.
2. The methodology used to reimburse for generic drug products shall be the higher of either (i) the lowest Wholesale Acquisition Cost (WAC) plus 10% or (ii) the second lowest WAC plus 6.0%. This methodology shall reimburse for products' costs based on a Maximum Allowable Cost (VMAC) list to be established by the single state agency.

a. In developing the maximum allowable reimbursement rate for generic pharmaceuticals, the department or its designated contractor shall:

- (1) Identify three different suppliers, including manufacturers that are able to supply pharmaceutical products in sufficient quantities. The drugs considered must be listed as therapeutically and pharmaceutically equivalent in the Food and Drug Administration's most recent version of the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book). Pharmaceutical products that are not available from three

different suppliers, including manufacturers, shall not be subject to the VMAC list.

(2) Identify that the use of a VMAC rate is lower than the Federal Upper Limit (FUL) for the drug. The FUL is a known, widely published price provided by CMS; and

(3) Distribute the list of state VMAC rates to pharmacy providers in a timely manner prior to the implementation of VMAC rates and subsequent modifications. DMAS shall publish on its website, each month, the information used to set the Commonwealth's prospective VMAC rates, including, but not necessarily limited to:

(a) The identity of applicable reference products used to set the VMAC rates;

(b) The Generic Code Number (GCN) or National Drug Code (NDC), as may be appropriate, of reference products;

(c) The difference by which the VMAC rate exceeds the appropriate WAC price; and

(d) The identity and date of the published compendia used to determine reference products and set the VMAC rate. The difference by which the VMAC rate exceeds the appropriate WAC price shall be at least or equal to 10% above the lowest-published wholesale acquisition cost for products widely available for purchase in the Commonwealth and shall be included in national pricing compendia.

b. Development of a VMAC rate that does not have a FUL rate shall not result in the use of higher-cost innovator brand name or single source drugs in the Medicaid program.

c. DMAS or its designated contractor shall:

(1) Implement and maintain a procedure to add or eliminate products from the list, or modify VMAC rates, consistent with changes in the fluctuating marketplace. DMAS or its designated contractor will regularly review manufacturers' pricing and monitor drug availability in the marketplace to determine the inclusion or exclusion of drugs on the VMAC list; and

(2) Provide a pricing dispute resolution procedure to allow a dispensing provider to contest a listed VMAC rate. DMAS or its designated contractor shall confirm receipt of pricing disputes within 24 hours, via telephone or facsimile, with the appropriate documentation of relevant information, e.g., invoices. Disputes shall be resolved within three business days of confirmation. The pricing dispute resolution process will include DMAS' or the contractor's verification of accurate pricing to ensure consistency with marketplace pricing and drug availability. Providers will be reimbursed, as appropriate, based on findings. Providers shall be required to use this

dispute resolution process prior to exercising any applicable appeal rights.

3. The provider's usual and customary charge to the public, as identified by the claim charge.

4. The Estimated Acquisition Cost (EAC), which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the General Assembly (as set forth in subdivision 8 of this section) or, in the absence thereof, by the following methodology set out in subdivisions a through c of this subdivision.

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS.

5. MAC methodology for specialty drugs. Payment for drug products designated by DMAS as specialty drugs shall be the lesser of subdivisions 1 through 4 of this section or the following method, whichever is least:

a. The methodology used to reimburse for designated specialty drug products shall be the WAC price plus the WAC percentage. The WAC percentage is a constant percentage identified each year for all GCNs.

b. Designated specialty drug products are certain products used to treat chronic, high-cost, or rare diseases; the drugs subject to this pricing methodology and their current reimbursement rates are listed on the DMAS website at the following internet address: http://www.dmas.virginia.gov/downloads/pdfs/pharm-special_mac_list.pdf.

c. The MAC reimbursement methodology for specialty drugs shall be subject to the pricing review and dispute resolution procedures described in subdivisions 2 c (1) and 2 c (2) of this section.

6. Payment for pharmacy services will be as described above; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The dispensing fee for brand name and generic drugs is \$3.75.

7. The Program pays additional reimbursement for unit dose dispensing systems of dispensing drugs. DMAS defines its unit dose dispensing system coverage consistent with that of the Board of Pharmacy of the Department of Health Professions (18VAC110-20-420). This service is paid only for patients residing in nursing facilities. Reimbursements are based on the allowed payments

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described above plus the unit dose per capita fee to be calculated by DMAS' fiscal agent based on monthly per nursing home resident service per pharmacy provider. Only one service fee per month may be paid to the pharmacy for each patient receiving unit dose dispensing services. Multisource drugs will be reimbursed at the maximum allowed drug cost for specific multiple source drugs as identified by the state agency or CMS' upper limits as applicable. All other drugs will be reimbursed at drug costs not to exceed the estimated acquisition cost determined by the state agency. The original per capita fee shall be determined by a DMAS analysis of costs related to such dispensing, and shall be reevaluated at periodic intervals for appropriate adjustment. The unit dose dispensing fee is \$5.00 per recipient per month per pharmacy provider.

8. An EAC of AWP minus 13.1% shall become effective July 1, 2010. ~~However, if the increased federal medical assistance percentage under the American Recovery and Reinvestment Act (P.L. 111-5) is extended through June 30, 2011, as provided in Item 297 SSS of the 2010 Acts of Assembly, the reduction shall remain at AWP minus 10.25% through September 30, 2010. An EAC of AWP minus 10.25% shall become effective October 1, 2010.~~ The dispensing fee for brand name and generic drugs of \$3.75 shall remain in effect, creating a payment methodology based on the previous algorithm (least of subdivisions of this section) plus a dispensing fee where applicable.

9. Home infusion therapy.

a. The following therapy categories shall have a pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug therapy, total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the CMS 1500 claim form.

b. The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.

10. Supplemental rebate agreement. Based on the requirements in § 1927 of the Social Security Act, the Commonwealth of Virginia has the following policies for the supplemental drug rebate program for Medicaid recipients:

a. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for legend drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract A and Amendment #2 to Contract A has been authorized by CMS.

b. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract B and Amendment #2 to Contract B has been authorized by CMS.

c. The model supplemental rebate agreement between the Commonwealth and pharmaceutical manufacturers for drugs provided to Medicaid recipients, submitted to CMS on February 5, 2004, and entitled Virginia Supplemental Drug Rebate Agreement Contract C, and Amendments #1 and #2 to Contract C has been authorized by CMS.

d. Supplemental drug rebates received by the state in excess of those required under the national drug rebate agreement will be shared with the federal government on the same percentage basis as applied under the national drug rebate agreement.

e. Prior authorization requirements found in § 1927(d)(5) of the Social Security Act have been met.

f. Nonpreferred drugs are those that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list. Nonpreferred drugs will be made available to Medicaid beneficiaries through prior authorization.

g. Payment of supplemental rebates may result in a product's inclusion on the PDL.

VA.R. Doc. No. R11-2605; Filed October 15, 2010, 3:25 p.m.

Notice of Extension of Emergency Regulation

Title of Regulation: 12VAC30-120. Waivered Services (adding 12VAC30-120-1000 through 12VAC30-120-1090; repealing 12VAC30-120-211 through 12VAC30-120-249).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Dates: October 29, 2009, through April 28, 2011.

Pursuant to § 2.2-4011 of the Code of Virginia, the Department of Medical Assistance Services requested an extension of the above-referenced emergency regulation to complete the requirements of the Administrative Process Act. The emergency regulations were published in 26:6 VA.R. 619-654 November 23, 2009 (<http://register.dls.virginia.gov/vol26/iss06/v26i06.pdf>).

The Department of Medical Assistance Services (DMAS) has completely rewritten its large set of regulations for the mental retardation/intellectual disability waiver. This significant regulatory project was conducted in collaboration with the Department of Behavioral Health and Developmental Services, which has daily administrative authority for this waiver. For the two agencies to reach consensus on all aspects of regulatory wording for this project, the agencies held numerous meetings of small work groups of representatives from both agencies over a time span of several months. In addition, DMAS worked with representatives and advocates in the intellectual disability community to obtain their feedback over these changes and incorporate them to the extent possible. Further research into existing policies and statutes was required to reach consensus on numerous issues. Because of the number of parties involved and the size and scope of the regulatory changes, this project has required a significant amount of time beyond that provided for in the ordinary regulatory cycle.

The Governor approved the department's request to extend the expiration date of the emergency regulation for six months as provided for in § 2.2-4011 D of the Code of Virginia. Therefore, the regulations will continue in effect through April 28, 2011.

Agency Contact: Helen Leonard, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-2149, FAX (804) 786-1680, or email helen.leonard@dmas.virginia.gov.

VA.R. Doc. No. R10-2056; Filed October 28, 2009, 6:35 p.m.

Proposed Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-1600 through 12VAC30-120-1660; adding 12VAC30-120-1605, 12VAC30-120-1670, 12VAC30-120-1680).**

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: January 7, 2011.

Agency Contact: Steve Ankiel, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 317-8894, FAX (804) 371-4986, or email steve.ankiel@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the plan for medical assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Service (DMAS) to

administer and amend the plan for medical assistance according to the board's requirements.

Purpose: The growth within the Medicaid Alzheimer's Assisted Living (AAL) waiver has been gradual and many families who would otherwise qualify are not able to access services due to a limited provider pool. This limit has resulted from programmatic design differences between the DSS licensing regulations and these DMAS waiver regulations. The proposed changes will provide opportunities for the provider pool to increase moderately, which in turn will improve accessibility to the waiver while assuring the health and safety of all participants.

Substance: Current AAL regulations (12VAC30-120-1600 et seq.) contain requirements that exceed current Virginia Department of Social Services (DSS) licensing requirements. Due to these requirements, the provider community has chosen to not participate in this waiver program as initially anticipated. The areas of key concern are:

1. Staffing, as follows: (i) employing a full time registered nurse when a program reaches 16 participants, (ii) requiring only activity staff to provide activities, (iii) requiring only nurses to distribute medications on two work shifts when recent professional licensing regulatory changes created registered medication aides, and (iv) limiting the credentials of direct care staff to certified nurse aides while the DSS license requirements for these providers permit a wider choice of types of credentials.
2. AAL waiver activity hours currently exceed DSS licensing requirements by three hours a week (from 19 to 16).

The proposed changes were developed with and agreed upon by the provider community. With these agreed upon revisions to the regulations, it is expected that the numbers of providers will increase and consequently, improvement in access to care will be experienced by the families who need these services.

Issues: The primary advantage of the proposed changes is the increased availability of these services to families and individuals who otherwise qualify for this program due to an increase in the providers rendering the needed service. This increased service availability is a benefit to all parties: families, providers, and localities. It will benefit the Commonwealth because the individuals who need this type of program will be cared for in a less expensive manner. A second advantage is the streamlining of regulations between multiple state agencies, thereby creating cost and service delivery efficiencies for providers. A third advantage is the removal from DMAS regulations of requirements that are more like licensing standards. Since DMAS is not a licensing agency, it is not advantageous for its regulations to contain such requirements.

The disadvantage to all parties would be if the proposed changes are not implemented because individuals in need of these services would have to be served in more expensive

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nursing facilities. Inconsistency of regulations between sister state agencies would continue to be a burden to providers in the absence of cost efficiencies. Nursing home providers are not expected to agree with changes that will enable the expansion of community providers as this represents business competition for them. However, since the nursing facilities in the Commonwealth typically have an occupancy rate of 90% or higher (for calendar year 2007 the rate was 91.16%), it is not anticipated that this community program will have a significant negative business impact for nursing facilities.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medical Assistance Services (Board) proposes to revise the regulations that govern the Alzheimers Assisted Living Waiver program so that they conform to Department of Social Services (DSS) regulations for assisted living facilities. The specific substantive changes that the Board proposes will:

- Allow any Licensed Health Care Professional (LHCP) to meet on-site staffing requirements so long as that LHCP is compliant with all other laws and regulations that govern scope of practice,
- Allow any LHCP that are legally allowed to dispense medicine to do so in assisted living facilities,
- Reduce, from 19 to 16, the number of required combined group and individual activity hours per week and
- Allow volunteers to run activities counted toward the required group activity hours.

The Board is making these changes to the waiver regulations so that more assisted living facilities will participate in the program. Currently only seven facilities accept these waivers.

Result of Analysis. The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact. Currently, waiver program regulations require that a registered nurse (RN), or a licensed practical nurse (LPN) working under the supervision of an RN, be awake, on duty and on premises for eight hours a day, five days a week. These regulations also currently require that medication be dispensed by an RN or LPN except between 11 p.m. and 7 a.m. During these hours, medication aides may dispense medication. Currently LHCP at facilities that participate in the waiver program must supervise at least 19 hours of planned activities, including one hour of individualized activity, for patients each week.

These proposed regulations will allow any LHCP to be awake, on duty and on premises for at least eight hours a day five days a week so long as they are working within their legal scope of practice and are in compliance with licensure regulations. The proposed regulations will also allow

registered medication aides to dispense medication on all work shifts and will allow volunteers, as well as LHCP, to supervise group and individualized activities. These proposed regulations reduce the number of required activity hours to 16, one of which must be offered to patients for one-on-one activities; this is the number of hours required by DSS facility licensure regulations.

These changes will allow more assisted living facilities to participate in this waiver program without incurring greater expense because of waiver program requirements that are more stringent than those in state law and DSS assisted living facility licensing regulations. Patients that are eligible for these waivers will also likely benefit from having more assisted living facilities participate in the waiver program as this will increase their housing choices. Because these regulatory changes represent current practice in the vast majority of assisted living facilities, no entity is likely to be harmed by them.

Businesses and Entities Affected. The Department of Medical Assistance Services (DMAS) reports that DSS currently licenses 114 assisted living facilities that can enroll in this waiver program (seven of these are currently enrolled). All of these facilities, as well as the patients that live in them, are potentially affected by these proposed regulations.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have no aggregate impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected

number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The agency concurs with the economic impact analysis prepared by the Department of Planning and Budget regarding the regulations concerning Alzheimer's Assisted Living Waiver Update.

Summary:

This proposed regulatory action updates the Alzheimer's Assisted Living Waiver to accommodate changes in the industry and clarify the regulations. These changes will bring current Virginia Department of Social Services' licensing standards and Department of Medical Assistance Services' waiver expectations more in sync with each other while reducing provider confusion and duplication of effort.

The proposed changes clarify clinical staff requirements, the number of activity hours, and who is permitted to provide supervision. Initiation of these changes is expected to increase the available provider pool and enhance participation in the waiver by eligible recipients.

12VAC30-120-1600. Definitions.

The following words or terms when used in this regulation shall have the following meanings unless the content clearly indicates otherwise.

"Activities of daily living" or "ADLs" means bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Administrator" means the person who oversees the day-to-day operation of the facility, including compliance with all regulations for licensed assisted living facilities.

"Admissions summary" means the Virginia Uniform Assessment Instrument and other relevant social, psychological, and medical information gathered by the

assisted living facility staff for use in the development and updates of the plan of care.

"Alzheimer's" means a diagnosis of Alzheimer's as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR), published by the American Psychiatric Association.

"Alzheimer's ~~and Related Dementias~~ Assisted Living Waiver" or "AAL Waiver" means the CMS-approved waiver that covers a range of community support services offered to individuals who have a diagnosis of Alzheimer's or a related dementia who meet nursing facility level of care.

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq., as amended.

"Appeal" means the process used to challenge ~~adverse~~ actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assisted living facility" means a congregate residential setting as defined in § 63.2-100 of the Code of Virginia.

"Auxiliary Grant Program" means a state and locally funded assistance program to supplement the income of a Supplemental Security Income (SSI) recipient or an adult who would be eligible for SSI except for excess income and who resides in a licensed assisted living facility with an approved rate.

"Barrier crime" means those crimes as defined in § 32.1-162.9:1 of the Code of Virginia.

~~"Comprehensive assessment" means the Virginia Uniform Assessment Instrument and other relevant social, psychological and medical information gathered by the assisted living facility staff for use in the development and updates of the plan of care.~~

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or family/caregiver for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of

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influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DSS" means the Virginia Department of Social Services.

"Enrolled provider" means an entity that is either licensed or certified by the appropriate state agency that also meets the standards and requirements set forth by DMAS, and has a current, signed provider participation agreement with DMAS.

"Designated preauthorization contractor" means DMAS or the entity that has been contracted by DMAS to perform preauthorization of services.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social Security Act to be offered to persons who are elderly or disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated preauthorization contractor shall only give preauthorization for medically necessary Medicaid-reimbursed home and community care.

"Individual" means the person receiving the services established in these regulations and who (i) meets the eligibility criteria for residing in a safe, secure environment as described in 22VAC40-72-10; (ii) meets the eligibility criteria for the AAL Waiver; and (iii) resides in a safe, secure environment of an assisted living facility.

"Licensed health care professional" or "LHCP" means any health care professional currently licensed by the relevant health regulatory board of the Department of Health Professions of the Commonwealth who is practicing within the scope of his license.

~~"Participating provider" means an entity that meets the standards and requirements set forth by DMAS, and has a current, signed provider participation agreement with DMAS.~~

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while remaining in the assisted living facility.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and

community-based care for those individuals who meet nursing facility level of care.

"Preadmission screening team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Related dementia" means a diagnosis of Dementia of the Alzheimer's Type as defined by the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition (DSM-IV-TR), published by the American Psychiatric Association.

~~"Resident" means any individual who (i) meets the eligibility criteria for residing in a safe, secure environment as described in 22VAC40-71-700 C 1; (ii) meets eligibility criteria for the AAL Waiver; and (iii) resides in a safe, secure environment of an assisted living facility.~~

"Safe, secure environment" means a self-contained special care unit as defined in 22VAC40-71-10 22VAC40-72-10.

"State Plan for Medical Assistance" or "Plan" means the regulations identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Virginia Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that is completed by the preadmission screening team, which assesses an individual's physical health, mental health, social, and functional abilities to determine if the individual meets the level of care for certain publicly funded long-term care programs such as nursing facility services.

12VAC30-120-1605. Waiver description and legal authority.

This Alzheimer's waiver operates under the authority of § 1915 (c) of the Social Security Act and 42 CFR 430.25(c)(2), which permit the waiver of certain State Plan requirements. These federal statutory and regulatory provisions permit the establishment of Medicaid waivers to afford the states with greater flexibility to devise different approaches to the provision of long-term care services. This particular waiver provides Medicaid recipients who have a diagnosis of Alzheimer's or related dementias with supportive services to enable such individuals to remain in their communities.

12VAC30-120-1610. Individual eligibility requirements.

A. Waiver service population. The AAL Waiver shall be available through a § 1915(c) of the Social Security Act waiver to eligible aged and disabled auxiliary grant recipients who reside in licensed assisted living facilities.

B. Eligibility criteria. To qualify for AAL Waiver services, individuals must meet all of the following criteria:

1. The waiver individual must be either:

- a. Elderly as defined by § 1614 of the Social Security Act; or
- b. Disabled as defined by § 1614 of the Social Security Act.

2. The waiver individual must meet the criteria for admission to a nursing facility as determined by a preadmission screening team using the full UAI.

3. The waiver individual must have a diagnosis of Alzheimer's or a related dementia as diagnosed by a licensed clinical psychologist or a licensed physician. The individual may not have a diagnosis of mental retardation as defined by the American Association on ~~Mental Retardation in Mental Retardation Intellectual and Developmental Disabilities, User's Guide - Mental Retardation: Definition, Classifications Classification and Systems of Supports, 10th Edition, or a serious mental illness as defined in 42 CFR 483.102(b).~~

4. The waiver individual must be receiving an auxiliary grant, and residing in or seeking admission to a safe, secure unit of a ~~DMAS-approved~~ DMAS-enrolled assisted living facility.

C. Assessment. Medicaid will not pay for any AAL Waiver services delivered prior to the date of the preadmission screening by the preadmission screening team and the physician signature on the Medicaid-Funded Long-Term Care Services Authorization Form (DMAS-96). Medicaid will not pay for any AAL Waiver services delivered prior to the individual's ~~establishment~~ effective date of Medicaid eligibility.

D. Enrollment. ~~After an initial 60 day application period and a random selection process to determine the order in which eligible individuals will be served by this waiver~~ For the enrollment of all CMS-approved waiver slots, individuals will be served handled on a first-come, first-served basis in accordance with available waiver funding. If there is not a waiver slot available for an individual, the individual shall be placed on the waiting list. ~~Individuals must meet all waiver eligibility criteria in order to be placed on the waiting list.~~

E. Preauthorization. Before a provider can bill DMAS for AAL Waiver services, preauthorization must be obtained from DMAS. Providers must submit all required information to the designated preauthorization contractor within 10 business days of initiating care. If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid-Funded Long-Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to either the designated preauthorization contractor or DMAS within 10 business days of initiating care, the services may be authorized beginning

with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the preadmission screening team physician's signature on the DMAS-96.

F. Review of the waiver individual's level of care. DMAS conducts this review based on the documentation submitted by the provider. The level of care assessments are performed to ensure that individuals receiving services in the waiver continue to meet the criteria for the waiver.

G. Termination of services. In the case of termination of AAL Waiver services by DMAS, waiver individuals shall be notified of their appeal rights pursuant to 12VAC30-110, Eligibility and Appeals. DMAS may terminate AAL Waiver care services for any of the following reasons:

- 1. The AAL Waiver is no longer required to prevent or delay institutional placement;
- 2. The waiver individual is no longer eligible for Medicaid;
- 3. The waiver individual is no longer eligible to receive an auxiliary grant;
- 4. The waiver individual no longer meets AAL Waiver criteria;
- 5. The waiver individual has been absent from, or has not received services from, the assisted living facility for more than 30 consecutive days;
- 6. The waiver individual's environment does not provide for his health, safety, and welfare; or
- 7. The assisted living facility no longer meets safe and secure licensing standards set by ~~VDSS~~ DSS or standards set by DMAS for service providers.

12VAC30-120-1620. Covered services.

A. Assisted living services include personal care ~~and~~ services, homemaker, chore, attendant care, and companion services. This service includes 24-hour on-site response staff to meet scheduled or unpredictable needs in a way that promotes maximum dignity and independence, and to provide supervision, safety and security.

B. For purposes of these regulations, assisted living services shall also include:

- 1. Medication administration. Medications shall be administered only by ~~an individual~~ a provider employee who is currently licensed to administer medications (physician, physician assistant, pharmacist, nurse practitioner, ~~RN, or LPN~~); licensed health care professional (LHCP), or registered medication aide, except on the 11 p.m. to 7 a.m. shift when medications may be administered by a medication aide that who meets the regulatory requirements as set forth by ~~the Department of Social Services~~ DSS and the ~~Board of Nursing~~ appropriate

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licensing board of the Department of Health Professions in the Commonwealth;

2. ~~Nursing evaluations.~~ Individual summaries. The RN LHCP must complete ~~a comprehensive assessment an admissions summary~~ of each resident individual upon admission to the facility and when a significant change in health status or behavior occurs in one of the following areas: weight loss, elopements, behavioral symptoms, or adverse reactions to prescribed medication. A RN LHCP shall identify resident individual care problem areas and formulate interventions to address those problems and to evaluate if the planned interventions were successful;

3. ~~Skilled nursing services.~~ LHCP services. Skilled nursing LHCP services are nursing services that are used to complete ~~resident assessments individual summaries~~ and administer medications, and provide training, consultation, and oversight of direct care staff. Skilled nursing LHCP services must be provided by a RN or by a LPN under the supervision of a RN LHCP who is licensed to practice in the state and provided in accordance and within the scope of practice specified by state law; and

4. Therapeutic social and recreational programming. An activity program must be designed to meet the individual specific needs of each resident waiver individual and to provide daily activities appropriate to residents with Alzheimer's or related dementia.

a. This program shall be individualized and properly implemented, followed, and reviewed as changes are needed.

b. ~~Residents~~ Waiver individuals who have wandering behaviors shall have an activity program to address these behaviors.

c. There shall be a minimum of ~~19~~ 16 hours of planned ~~group~~ programming each week, not to include activities of daily living. ~~d. Each resident must receive As part of these 16 hours, there shall be~~ at least one hour of one-on-one activity per week, not to include activities of daily living. ~~This activity must be provided exclusively by activities staff.~~ Such one-on-one activities may be rendered by such licensed or volunteer staff as determined appropriate by the provider.

e. d. Group activities must be provided by staff assigned responsibility for the activities.

12VAC30-120-1630. General requirements for participating providers.

A. Requests for participation will be screened by DMAS to determine whether the provider applicant meets the requirements for participation. Requests for participation must be accompanied by verification of the facility's current licensure from ~~VDSS~~ DSS.

B. For DMAS to approve provider agreements with AAL Waiver providers, providers must meet staffing, financial solvency, and disclosure of ownership requirements.

1. ~~Approved~~ Enrolled providers must assure freedom of choice to individuals, or their authorized representative, in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services are performed;

2. ~~Approved~~ Enrolled providers must assure the individual's freedom to refuse medical care, treatment, and services;

3. ~~Approved~~ Enrolled providers must accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis;

4. ~~Approved~~ Enrolled providers must provide services and supplies to individuals in full compliance with Title VI of the Civil Rights Act of 1964, as amended (42 USC § 2000 et seq.), which prohibits discrimination on the grounds of race, color, religion, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973 (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities ~~in the areas of employment, public accommodations, state and local government services, and telecommunications;~~

5. ~~Approved~~ Enrolled providers must provide services and supplies to individuals of the same quality as are provided to the general public;

6. ~~Approved~~ Enrolled providers must submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS beginning with the individual's authorization date for the waiver services;

7. ~~Approved~~ Enrolled providers must use only DMAS-designated forms for service documentation. The provider must not alter the DMAS forms in any manner unless approval from DMAS is obtained prior to using the altered forms. If there is no designated DMAS form for service documentation, the provider must include all elements required by DMAS in the provider's service documentation;

8. ~~Approved~~ Enrolled providers must use DMAS-designated billing forms for submission of charges;

9. ~~Approved~~ Enrolled providers must perform no direct marketing activities to Medicaid individuals;

10. ~~Approved~~ Enrolled providers must maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided;

a. In general, such records shall be retained for at least six years from the last date of service or as provided by applicable state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The storage location, as well as the agent or trustee, shall be within the Commonwealth;

11. ~~Approved~~ Enrolled providers must furnish information on request and in the form requested, to DMAS, the Office of the Attorney General of Virginia or his authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

12. ~~Approved~~ Enrolled providers must disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid;

13. Pursuant to 42 CFR § 431.300 et seq., 12VAC30-20-90, and any other applicable federal or state law, all providers shall hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits, or the data is necessary for the functioning of DMAS in conjunction with the cited laws;

14. ~~Approved~~ Enrolled providers must notify DMAS in writing as at least 15 days before ownership or management of the facility changes;

15. Pursuant to § 63.2-1606 of the Code of Virginia, if a participating enrolled provider knows or suspects that an AAL Waiver services individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation must report this immediately from first knowledge to the local DSS or adult protective services hotline as applicable;

16. In addition to compliance with the general conditions and requirements, all providers enrolled by DMAS shall

adhere to the conditions of participation outlined in the individual provider participation agreements and in the applicable DMAS provider manual. DMAS shall conduct ongoing monitoring of compliance with provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both;

17. Enrolled providers are responsible for complying with § 63.2-1720 of the Code of Virginia regarding criminal record checks. All employees must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults ~~and~~ or children. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files. DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime as defined herein. ~~Providers are responsible for complying with § 63.2-1720 of the Code of Virginia regarding criminal record checks; and~~

18. ~~Approved~~ Enrolled providers must immediately notify DMAS, in writing, of any change in the information that the provider previously submitted to DMAS.

~~C. A provider shall have the right to appeal adverse actions taken by DMAS. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.~~

~~D. C.~~ C. The Medicaid provider agreement shall terminate pursuant to § 32.1-325 of the Code of Virginia upon conviction of the provider of a felony pursuant to § 32.1-325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. territories, must, within 30 days of the conviction, notify the Virginia Medicaid Program and relinquish the provider agreement.

~~E. D.~~ D. Provider's ~~Responsibility~~ responsibility for the ~~Patient Information Form (DMAS-122).~~ Medicaid LTC Communication Form (DMAS-225). It shall be the responsibility of the service provider to notify ~~VDSS~~ DSS and DMAS, in writing, when any of the following circumstances occur:

1. AAL Waiver services are implemented;
2. An individual dies;
3. An individual is discharged from the provider; or
4. Any other circumstances (including hospitalization) that cause AAL Waiver services to cease or be interrupted for more than 30 days.

~~F. E.~~ E. Termination of waiver services.

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1. In a nonemergency situation, i.e., when the health and safety of the individual or provider personnel is not endangered, the participating provider shall give the individual or family/caregiver, or both, at least 30 days' written notification plus three days for mailing of the intent to discontinue services. The notification letter shall provide the reasons for and the effective date the provider is discontinuing services.

2. In an emergency situation when the health and safety of the individual or provider personnel is endangered, the participating provider must notify DMAS immediately prior to discontinuing services. The written notification period shall not be required. If appropriate, local DSS Adult Protective Services must also be notified immediately.

12VAC30-120-1640. Participation standards for provision of services.

A. Facilities must have a signed provider agreement approved by DMAS to provide AAL Waiver services.

B. The facility must provide a safe, secure environment for waiver recipients. There may be one or more self-contained special care units in a facility or the whole facility may be a special care unit. Personalized care must be furnished to individuals who reside in their own living units, with semi-private rooms limited to two people and a maximum of two individuals sharing a bathroom.

C. Care in a facility must be furnished in a way that fosters the independence of each individual to facilitate aging in place. Routines of care provision and service delivery must be ~~consumer driven~~ individual-driven to the maximum extent possible and ~~treat each person~~ individual must be treated with dignity and respect.

D. The medical care of ~~residents~~ individuals must be under the direction and supervision of a licensed physician. This can be the individual's private physician. The facility must ensure that residents have appointments with their physicians at least annually, and additionally as needed as determined by the physician.

E. Administrators.

1. Administrators of participating assisted living facilities must meet the regulatory requirements as set forth by the Virginia Department of Social Services (~~22VAC40-71-60 et seq.~~) (22VAC40-72-191) and the Board of Long-Term Care Administrators (~~18VAC95-20-10 through 18VAC95-20-474~~) (18VAC95-20).

2. The administrator shall demonstrate knowledge, skills and abilities in the administration and management of an assisted living facility program including:

a. Knowledge and understanding of impaired elderly or persons with disabilities;

b. Supervisory and interpersonal skills;

c. Ability to plan and implement the program; and

d. Knowledge of financial management sufficient to ensure program development and continuity.

3. The administrator shall demonstrate knowledge of supervisory and motivational techniques sufficient to:

a. Accomplish day-to-day work;

b. Train, support and develop staff; and

c. Plan responsibilities for staff to ensure that services are provided to participants.

4. The administrator shall complete 20 hours of continuing education annually to maintain and develop skills. This training shall be in addition to first aid; and CPR, ~~or~~ and orientation training to be received upon commencement of employment.

F. ~~Nursing staff~~ Licensed health care professional (LHCP) requirements.

1. Each facility shall have at least one ~~registered nurse (RN) or licensed practical nurse (LPN) under the supervision of an RN,~~ LHCP awake, on duty, and on-site in the facility for at least eight hours a day, five days each week ~~and on-call 24 hours a day. The person on-call must be able to arrive at the facility within one hour.~~ In addition, the facility shall provide for emergency call coverage at all hours of the day and night.

2. The ~~RN~~ LHCP is responsible for staff training, ~~resident assessment~~ individual summaries, plans of care, and medication oversight.

3. ~~Assessments~~ Individuals' summaries.

a. ~~Comprehensive assessment.~~ Admissions summary. An ~~RN~~ LHCP must complete ~~a comprehensive assessment~~ an admissions summary of each ~~resident~~ individual upon admission. The ~~comprehensive assessment~~ admissions summary includes the UAI and other relevant social, psychological, and medical information. The ~~comprehensive assessment~~ admissions summary must also include the physician's assessment information as contained in 22VAC40-71-150 L, 22VAC40-72-40 and 22VAC40-72-440. The ~~comprehensive assessment~~ admissions summary must be updated yearly and when a significant change in health status or behavior occurs. The information gathered during the ~~comprehensive assessment~~ preparation of the admissions summary is used to create the ~~resident's~~ individual's plan of care as contained in 22VAC40-71-170 C and D, 22VAC40-72-40 and 22VAC40-72-440.

b. Plan of care. Based on the ~~individual resident assessment~~ specific individual's admission summary and the UAI, the ~~RN~~ LHCP, in coordination with other

caregivers including the ~~resident's individual's~~ authorized representative shall:

- (1) Develop the ~~resident's individual's~~ plan of care and formulate interventions to address the specific problems identified;
- (2) Evaluate both the facility's implementation and the ~~resident's individual's~~ response to the plan of care; and
- (3) Review and update the plan of care at least quarterly and more often when necessary to meet the needs of the ~~resident individual~~.

c. Monthly assessments summary. The ~~RN or an LPN, under the supervision of the RN, LHCP~~ must complete a monthly assessment summary. Significant changes documented on the monthly assessment summary must be addressed in an updated plan of care. The comprehensive assessment admissions summary information shall also be updated as needed. At a minimum, the monthly assessment contains summary must contain information about the following elements:

- (1) Weight loss;
- (2) Falls;
- (3) Elopements;
- (4) Behavioral symptoms;
- (5) Adverse reactions to prescribed medications;
- (6) Dehydration;
- (7) Pressure ulcers;
- (8) Fecal impaction;
- (9) Cognitive changes;
- (10) Change in diagnoses; and
- (11) Change in levels of dependence in ADLs.

~~4. In a facility with fewer than 16 waiver recipients, the facility may employ an RN as part time or as a contracted employee.~~

4. The facility's ~~RN~~ LHCP may also serve as the administrator. In all instances where the facility's ~~RN~~ LHCP is assigned duties as an administrator, the facility shall assure that the ~~RN~~ LHCP devotes sufficient time and effort to all clinical duties to secure health, safety, and welfare of ~~recipients individuals~~.

~~Any facility having more than 16 waiver recipients must employ full time an RN to be responsible for the clinical needs of the recipients.~~

G. Unit coordinator.

~~1. Facilities must have a unit coordinator, awake and on-site in the unit, who will manage the daily routine operation of the specialty unit.~~

~~2. The unit coordinator must be available to the facility 24 hours a day.~~

~~3. At a minimum, the unit coordinator must be a certified nurse aide (CNA) with at least one year experience in a DMAS approved assisted living facility or nursing home or other setting that involves working with vulnerable adults.~~

~~4. The unit coordinator may be an RN or an LPN who is serving as the assisted living facility's daily nurse, the administrator, or the activities director.~~

~~5. In the event the unit coordinator is not available, an alternate qualified staff member may serve in this capacity. Each assisted living facility must establish its own written protocol and assure that only qualified staff fulfill this requirement.~~

~~6. In all instances where the facility's RN is assigned other duties as an administrator, unit coordinator, or both, the facility must assure that the RN devotes sufficient time and effort to all clinical duties.~~

H. G. Structured activities program. There shall be a designated employee responsible for managing or coordinating the structured activities program. This employee shall be on site in the special care unit at least 20 hours a week, shall maintain personal interaction with the residents and familiarity with their needs and interests, and shall meet at least one of the following qualifications:

1. Be a qualified therapeutic recreation specialist or activities professional;
2. Be eligible for certification as a therapeutic recreation specialist or an activities professional by a recognized accrediting body;
3. Have at least one year full-time work experience within the last five years in an activities program in an adult care setting;
4. Be a qualified occupational therapist or an occupational therapy assistant; or
5. Prior to or within six months of employment, have successfully completed 40 hours of VDSS-approved training.

~~I. Certified nurse aides~~ H. Direct care staff. In order to provide services in this waiver, the assisted living facility must use certified nurse aides (CNA) in the specialty unit at all times staff who comply with 22VAC40-72-250, 22VAC40-72-1110, and 22VAC40-72-1120 in staffing the specialty care unit.

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~~J. I.~~ The assisted living facility must have sufficient qualified and trained staff to meet the needs of the residents at all times.

~~K. J.~~ There must be at least ~~two~~ one awake direct care staff in the special care unit at all times and more if dictated by the needs of the residents.

~~L. K.~~ Training requirements for all staff.

1. All staff who have contact with residents, including the administrator, shall have completed 12 hours of Alzheimer's or related dementia-specific training within 30 days of employment. The training must be conducted by a health care educator, adult education professional, or a licensed professional, with expertise in Alzheimer's or related dementia. The health care educator, adult education professional, or licensed professional must be acting within the scope of the requirements of his profession, and have had at least 12 hours of training in the care of individuals with cognitive impairments due to Alzheimer's or related dementia prior to performing the training, and have had a minimum of three years experience in the health care or dementia fields. In addition to health care educators and adult education professionals, licensed professionals eligible to conduct this training may include: physicians, psychologists, registered nurses, licensed practical nurses, occupational therapists, physical therapists, speech-language therapists, licensed clinical social workers, or licensed professional counselors.

2. All direct care staff must receive annual training in accordance with 22VAC40-71-630 22VAC40-72-250 and 22VAC40-72-260, with at least eight hours of training in the care of residents with dementia and medical nursing needs. This training may be incorporated into the existing training program and must address the medical nursing needs specific to each resident in the special care unit. This training must also incorporate problem areas that may include weight loss, falls, elopements, behavioral symptoms, and adverse reactions to prescribed medications. A health care educator, adult education professional or licensed professional with expertise in dementia must conduct this training. ~~The health care educator, adult education professional or licensed professional must be acting within the scope of his profession and have had at least 12 hours of training in the care of individuals with cognitive impairments due to dementia prior to performing the training.~~

3. ~~The individual conducting the training must have at least three years of experience in the health care or dementia care field. In addition to health care educators and adult education professionals, licensed professionals eligible to conduct the training include: physicians, psychologists, registered nurses, occupational therapists, physical therapists, speech/language pathologists, licensed clinical social workers, and licensed professional counselors.~~

~~M. L.~~ Documentation. The assisted living facility shall maintain the following documentation for review by DMAS staff for each assisted living resident:

1. All UAIs, authorization forms, plans of care and assessments summaries and individuals' admissions completed for the resident maintained for a period not less than six years from the recipient's start of care in that facility;

2. All written communication related to the provision of care between the facility and the assessor, licensed health care professional, DMAS, VDSS, the recipient, or other related parties; and

3. A log that documents each day that the recipient is present in the facility.

12VAC30-120-1650. Payment for services.

A. DMAS shall pay the facility a per diem fee for each AAL Waiver recipient authorized to receive assisted living services. Except for 14 days of leave each calendar year as described in subsection C of this section, payment of the per diem fee is limited to the days in which the recipient is physically present in the facility.

B. The services that are provided as a part of the auxiliary grant rate pursuant to ~~22VAC40-25~~ 22VAC40-25-40 will not be included for payment from the waiver.

C. Periods of absence from the assisted living facility.

1. An assisted living facility AAL Waiver bed may be held for leave when the ~~resident's~~ individual's plan of care provides for such leave. Leave includes visits with relatives and friends or admission to a rehabilitation center for up to seven consecutive days for an evaluation. Leave ~~does~~ shall not include periods of absence due to an admission to a hospital or nursing facility.

2. Leave ~~is~~ shall be limited to 14 cumulative days in any 12-month period. Leave ~~is~~ resident individual specific and is counted from the first occurrence of overnight leave that ~~a resident~~ an individual takes. From that date, a resident has 14 days of leave available during the next 365 days.

3. After the 14 days of leave have been exhausted and during periods of absence due to a hospital or nursing facility admission, the assisted living facility may choose to hold the bed for the ~~resident individual~~, but DMAS ~~will~~ shall not pay for the service. The ~~resident individual~~ or the ~~resident's~~ individual's authorized representative may choose to pay to hold the bed by paying the assisted living facility directly using other funds. The rate shall be negotiated between the ~~resident's~~ individual's authorized representative and the assisted living facility, but shall not exceed the auxiliary grant rate in effect at the time of the ~~resident's~~ individual's absence.

4. During periods of absence for any reason, DMAS shall hold the waiver slot for the ~~resident individual~~ for a total of 30 consecutive days. If the ~~resident's individual's~~ absence exceeds 30 days, DMAS shall terminate AAL Waiver services and assign the slot to the next person on the waiting list.

12VAC30-120-1660. Utilization review.

A. DMAS shall conduct ~~audits~~ utilization reviews of the services billed to DMAS and interview recipients to ensure that services are being provided and billed in accordance with DMAS policies and procedures.

B. DMAS will ~~review all facilities providing~~ conduct quality management reviews of the services provided and interview recipients for all facilities providing services in this waiver ~~on a regular basis~~ to ensure the health and safety in this waiver. All quality management and level of care reviews will be performed at least annually ~~and will be performed on site~~.

12VAC30-120-1670. Waiver waiting list.

DMAS shall maintain a waiting list for the purpose of individuals' access to this waiver program once all of the currently approved waiver slots have been filled. Individuals must meet all waiver eligibility criteria in order to be placed on the waiting list. Individuals may be removed from the waiting list because: (i) they request that their names be removed; (ii) they expire; or (iii) they are placed in an active slot and begin to receive services.

12VAC30-120-1680. Appeals.

A. Providers shall have the right to appeal actions taken by DMAS. Provider appeals shall be considered pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and DMAS regulations at 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

B. Medicaid recipients shall have the right to appeal actions taken by DMAS. Recipient appeals shall be considered pursuant to 12VAC30-110.

DOCUMENTS INCORPORATED BY REFERENCE
(12VAC30-120)

User's Guide: Mental Retardation: Definition, Classification, and Systems of Supports, 10th Edition, 2002, American Association on ~~Mental Retardation~~ Intellectual and Developmental Disabilities.

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DMS-IV-TR), 2000, American Psychiatric Association.

Underwriter's Laboratories Safety Standard 1635, Standard for Digital Alarm Communicator System Units, Third Edition, January 31, 1996, with revisions through August 15, 2005.

Underwriter's Laboratories Safety Standard 1637, Standard for Home Health Care Signaling Equipment, Fourth Edition, December 29, 2006.

VA.R. Doc. No. R09-1909; Filed October 15, 2010, 4:05 p.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Notice of Change in Effective Date

Title of Regulation: 13VAC5-31. Virginia Amusement Device Regulations (amending 13VAC5-31-20, 13VAC5-31-40, 13VAC5-31-50, 13VAC5-31-75, 13VAC5-31-85; adding 13VAC5-31-280, 13VAC5-31-290).

Statutory Authority: § 36-98.3 of the Code of Virginia.

Effective Date: March 1, 2011.

The Board of Housing and Community Development gives notice that the January 3, 2011, effective date of the Virginia Amusement Device Regulations, 13VAC5-31, which was published in 27:2 VA.R. 178-183 September 27, 2010, is changed to March 1, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhdcd.virginia.gov.

VA.R. Doc. No. R09-1892; Filed October 22, 2010, 10:25 a.m.

Notice of Change in Effective Date

Title of Regulation: 13VAC5-51. Virginia Statewide Fire Prevention Code (amending 13VAC5-51-21, 13VAC5-51-81, 13VAC5-51-85, 13VAC5-51-121, 13VAC5-51-130, 13VAC5-51-131, 13VAC5-51-132, 13VAC5-51-133, 13VAC5-51-133.5, 13VAC5-51-135, 13VAC5-51-140, 13VAC5-51-145, 13VAC5-51-150, 13VAC5-51-154, 13VAC5-51-155; adding 13VAC5-51-154.5; repealing 13VAC5-51-143).

Statutory Authority: § 27-97 of the Code of Virginia.

Effective Date: March 1, 2011.

The Board of Housing and Community Development gives notice that the January 3, 2011, effective date of the Virginia Statewide Fire Prevention Code, 13VAC5-51, which was published in 27:2 VA.R. 183-217 September 27, 2010, is changed to March 1, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street,

Regulations

Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1893; Filed October 22, 2010, 10:25 a.m.

Notice of Change in Effective Date

Title of Regulation: **13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-10, 13VAC5-63-20, 13VAC5-63-30, 13VAC5-63-40, 13VAC5-63-50, 13VAC5-63-60, 13VAC5-63-70, 13VAC5-63-80, 13VAC5-63-150, 13VAC5-63-160, 13VAC5-63-190, 13VAC5-63-200, 13VAC5-63-210, 13VAC5-63-220, 13VAC5-63-230, 13VAC5-63-240, 13VAC5-63-245, 13VAC5-63-250, 13VAC5-63-267, 13VAC5-63-280, 13VAC5-63-290, 13VAC5-63-300, 13VAC5-63-310, 13VAC5-63-320, 13VAC5-63-330, 13VAC5-63-350, 13VAC5-63-360, 13VAC5-63-400, 13VAC5-63-434, 13VAC5-63-440, 13VAC5-63-450, 13VAC5-63-480, 13VAC5-63-490, 13VAC5-63-500, 13VAC5-63-520, 13VAC5-63-530, 13VAC5-63-540; adding 13VAC5-63-264, 13VAC5-63-365; repealing 13VAC5-63-335, 13VAC5-63-436, 13VAC5-63-437).**

Statutory Authority: § 36-98 of the Code of Virginia.

Effective Date: March 1, 2011.

The Board of Housing and Community Development gives notice that the January 3, 2011, effective date of the Virginia Uniform Statewide Building Code, 13VAC5-63, which was published in 27:2 VA.R. 217-342 September 27, 2010, is changed to March 1, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1894; Filed October 22, 2010, 10:25 a.m.

Notice of Change in Effective Date

Title of Regulation: **13VAC5-91. Virginia Industrialized Building Safety Regulations (amending 13VAC5-91-10, 13VAC5-91-20, 13VAC5-91-40, 13VAC5-91-50, 13VAC5-91-60, 13VAC5-91-70, 13VAC5-91-100, 13VAC5-91-120, 13VAC5-91-160, 13VAC5-91-200, 13VAC5-91-210, 13VAC5-91-245, 13VAC5-91-260).**

Statutory Authority: § 36-73 of the Code of Virginia.

Effective Date: March 1, 2011.

The Board of Housing and Community Development gives notice that the January 3, 2011, effective date of the Virginia Industrialized Building Safety Regulations, 13VAC5-91, which was published in 27:2 VA.R. 342-347 September 27, 2010, is changed to March 1, 2011.

Agency Contact: Stephen W. Calhoun, Regulatory Coordinator, Department of Housing and Community Development, Main Street Center, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7000, FAX (804) 371-7090, TTY (804) 371-7089, or email steve.calhoun@dhcd.virginia.gov.

VA.R. Doc. No. R09-1895; Filed October 22, 2010, 10:25 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

VIRGINIA BOARD FOR ASBESTOS, LEAD, AND HOME INSPECTORS

Proposed Regulation

Title of Regulation: **18VAC15-60. Mold Inspector and Remediator Regulations (adding 18VAC15-60-10 through 18VAC15-60-390).**

Statutory Authority: §§ 54.1-201 and 54.1-501 of the Code of Virginia.

Public Hearing Information:

December 14, 2010 - 9 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, 2nd Floor, Board Room 4, Richmond, VA

Public Comment Deadline: January 7, 2011.

Agency Contact: David Dick, Executive Director, Virginia Board for Asbestos, Lead, and Home Inspectors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (804) 527-4297, or email alhi@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia states that the board has the power and duty to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000

et seq.) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board. The regulations shall not be in conflict with the purposes and intent of Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.) and 3 (§ 54.1-300 et seq.) of Title 54.1 of the Code of Virginia.

Section 54.1-501 of the Code of Virginia states that the board shall promulgate regulations for licensing of mold inspectors and mold remediators not inconsistent with Chapter 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia regarding the professional qualifications of such applicants, the requirements necessary for passing applicable examinations in whole or in part, the proper conduct of its examinations, the proper conduct of the mold inspectors and mold remediators licensed by the board, the implementation of exemptions from licensure requirements, and the proper discharge of its duties. The board has the discretion to impose different requirements for licensure for the performance of mold inspections and mold remediation.

Purpose: The new regulations are created as the result of Chapters 358 and 819 of the 2009 Acts of Assembly, which require that the Board for Asbestos, Lead, and Home Inspectors create regulations for the licensure of mold inspectors and mold remediators.

The goals of the proposal include establishing effective requirements for entry to licensure and standards of practice and conduct for mold inspectors and mold remediators. The establishment of these requirements will ensure minimum competency for the performance of these tasks. Minimum competency of licensees will benefit the public by ensuring that licensed mold inspectors and mold remediators will have met established regulatory standards and thus be able to render the services for which they are hired. The mold inspection and remediation industry in Virginia is presently unregulated.

Substance: The new regulations establish the scope, definitions, application requirements for licensure, licensure renewal requirements, and standards of practice and conduct for licensed mold inspectors and mold remediators. The regulations also establish the board's disciplinary authority over this group of regulants.

Issues: The primary advantages to the public include the assurance of a universal standard of minimum competency for professionals so as to discourage the solicitation of unscrupulous work practices in the mold industry. A potential disadvantage to the public may be realized in an increase in fees for mold remediation and inspection services as individuals and contractors absorb training and licensure costs.

The primary advantage to Department of Professional and Occupational Regulation and the Commonwealth is the

implementation of a successful regulatory program where no program previously existed. As a state that is favorably viewed for its effectiveness in administering other occupational regulatory programs, this provides another opportunity for the Commonwealth to help establish an industry standard to be considered by other states and territories in the United States. No disadvantage has been identified.

Other pertinent matters of interest to the regulated community include the establishment of baseline standards in an industry that currently has none on the state or federal level. This will serve as the foundation for the continued improvement of an effective regulatory program that will be manifested in more effective services for the citizens of the Commonwealth who require mold inspection or remediation services.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to the Chapter 358 of the 2009 Acts of Assembly, the proposed regulations establish rules for mold remediators and inspectors.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section. A different design would likely yield the same benefits at lower cost for at least one proposed change.

Estimated Economic Impact. Pursuant to the Chapter 358 of the 2009 Acts of Assembly, the proposed regulations establish rules for mold remediators and inspectors under the authority of Board of Asbestos, Lead, and Home Inspectors (the Board).

Currently, mold inspection and remediation activities in Virginia are unregulated. The proposed regulations establish initial requirements for licensure, standards of practice and conduct, and continuing education requirements for mold inspectors and remediators as mandated by the Chapter 358 of the 2009 Acts of Assembly.

Mold remediator workers and supervisors will be required to successfully complete a minimum of a 16-hour or 24-hour initial training for licensure, respectively. Similarly, the mold inspectors will be required to complete a minimum of a 24-hour initial training. Remediator supervisors and inspectors will also be required to complete an 8-hour continuing education annually. And, remediator workers will be required to complete an 8-hour continuing education biannually.

The main economic effect of the proposed regulations will be on the individuals wishing to be licensed as mold remediator workers, mold remediator supervisors, and mold inspectors. These individuals will have to devote between 16 and 24 hours of their time for initial licensure and 8 hours annually or biannually to maintain their good standing. The cost of

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initial training may vary from \$100 to \$500. The cost of continuing education courses is estimated to be between \$150 and \$300. Also, the applicants will be required to pay a license fee of \$25 every year. According to the Department of Professional and Occupation Regulation (DPOR), approximately 500 to 1000 individuals may be interested in seeking licensure for remediator worker, supervisor, or inspector. Although the regulations introduce costs for licensure, individuals would not be interested in incurring these costs if the expected benefits to them did not exceed the costs.

Some of the other economic effects of the proposed changes are expected to be on the consumers. According to DPOR, these regulations will assure a minimum standard of competency and discourage the solicitation of unscrupulous work practices in the mold industry. However, the proposed regulations will also create an entry barrier into mold remediation and inspection market and may reduce competition. Reduced competition is usually associated with higher prices when compared to the prices in more competitive markets. Also, the licensees may be able to pass more successfully their training, licensure, and continuing education costs onto consumers in a less competitive market.

The creation of a new licensure program will increase the activities of the board and consequently its administrative expenses. DPOR estimates approximately \$7,761 will be needed annually for four additional board meeting expenses.

Generally, protection of public health is one of the driving reasons for establishing regulations. For example, the same board regulates asbestos and lead which carry significant health risks to humans. In this case, however, there appears to be lack of scientific evidence establishing a strong link between mold and serious health risks. Probably because of the lack of scientific evidence, mold remediation remains an unregulated activity in most states and in federal government. According to DPOR, only Texas and Louisiana have regulatory mold remediation programs. Thus, it is not clear whether the public health benefits of the proposed mold remediation regulations would be significant to justify the costs of compliance.

Given that the public health benefits of the proposed regulations may be in suspect and that the board is mandated to establish regulations, it may be worthwhile to consider reducing the length of the annual and biannual continuing education classes which would reduce the compliance costs without a corresponding reduction in public health benefits.

Businesses and Entities Affected. The proposed regulations will affect between 500 and 1000 individuals who may be interested in obtaining a license for mold remediation and inspection.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. Compliance costs associated with licensing may increase mold remediation and inspection prices and reduce the demand for such services. Reduction in demand for services could in turn decrease demand for labor. On the other hand, the regulation of a new activity will demand more time from the board members and its administrative staff. The board will have additional four meetings annually and a part time staff member will be needed to handle daily activities associated with mold remediation and inspection licensure.

Effects on the Use and Value of Private Property. The proposed regulations do not have a direct effect on the use and value of private property. However, the proposed regulations are expected to improve profit margins of mold remediation and inspection providers due to reduced competition. Higher profit margins would have a positive impact on the asset value of mold remediation and inspection businesses.

Also, prolonged mold presence could cause structural damage to homes and buildings. Depending on the extent to which the proposed regulations actually discourage the use of remediation and inspection services due to higher prices, a corresponding effect on the value of homes and buildings may occur.

Small Businesses: Costs and Other Effects. Most of the businesses who may be interested in mold remediation and inspection are believed to be small businesses. Thus, all of the effects discussed above apply to small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations will introduce compliance costs on those who are interested in obtaining a mold remediation or inspection license. While it is not possible to completely eliminate all of the compliance costs, it appears that reducing the number of annual continuing education hours required would mitigate the adverse impact.

Real Estate Development Costs. The proposed regulations do not have any direct impact on real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 107 (09). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include

(i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPBs best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with approval. DPB's economic impact analysis suggested that the board consider reducing the length of the annual and biannual continuing education classes, which would reduce the compliance cost without a corresponding reduction in public health benefits. The board will carefully consider all public comment concerning the duration and cost of the required training.

Summary:

Chapters 358 and 819 of the 2009 Acts of Assembly charged the board with the creation of a licensure program for the regulation of mold inspectors and mold remediators. The proposed regulation creates the licensure entry requirements, renewal requirements, and standards of practice and conduct for this group of regulants, as well as the disciplinary authority of the board.

CHAPTER 60
MOLD INSPECTOR AND REMEDIATOR
REGULATIONS

Part I
Exemptions from Licensure Requirement

18VAC15-60-10. Exemptions from licensure requirement.

This chapter shall not apply to the following:

1. An individual performing mold remediation in an area in which the mold contamination for the total project affects a total surface area of less than 10 square feet;
2. An owner or the managing agent or employee of an owner performing mold inspections or mold remediation on the owner's residential property, provided such property contains no more than four residential dwelling units;
3. Lab technicians who analyze mold samples as long as it is limited to analysis that is performed solely in a laboratory;
4. An individual performing activities limited to power washing and surface cleaning of a building exterior;
5. Phase 1 environmental site assessments conducted in accordance with ASTM E1527-05 standards that, through

the routine conduction of the inspection, indicate the presence of mold. Such inspections shall not include any further investigation of the mold or any other duties of a mold inspector as defined in this chapter;

6. Professional engineers correcting a moisture problem; or
7. Any individual applying chemicals to a wood structure for the sole purpose of controlling wood-destroying pests in compliance with the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia).

Part II
Definitions

18VAC15-60-20. Definitions.

Section 54.1-500 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

"Mold" means any living or dead fungi or related products or parts, including spores, hyphae, and spore-producing structures.

"Mold analysis" means the examination of a sample collected during a mold inspection for the purpose of (i) determining the amount or presence of or identifying the genus, species, or functional grouping of any living or dead mold present in the sample or (ii) identifying or determining the amount or presence of any fungal products including, but not limited to, mycotoxins and fungal volatile organic compounds present in the sample.

"Mold inspection" means (i) an inspection, investigation, or survey of a dwelling or other structure to determine the presence of mold; (ii) the development of a mold management plan or mold remediation protocol; or (iii) the collection or analysis of a mold sample.

"Mold inspector" means an individual who has been licensed by the board to perform mold inspections.

"Mold remediation" means cleaning mold from building material surfaces or the removal of contaminated building materials that are unsalvageable and other activities, including applying biocides or antimicrobial compounds and sanitization protocols, intended to prevent future mold contamination.

"Mold remediator" means an individual licensed by the board to perform mold remediation.

"Person" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, or any other individual or entity.

The following words and terms when used in this chapter shall have the following meaning unless the context clearly indicates otherwise.

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"Approved mold training course" means any training course offered by a person who has been approved by the board to provide training for individuals that is required for obtaining an initial license or renewing an existing license as a mold remediator worker, mold remediator supervisor, or mold inspector.

"Approved mold training provider" means a person who has been approved by the board to offer one or more approved mold training courses.

"AIHA" means the American Industrial Hygiene Association.

"ANSI" means the American National Standards Institute.

"Applicant" means an individual seeking licensure that has submitted a fully executed application or any person seeking board approval to offer mold training courses.

"Application" means a board-prescribed form submitted with the appropriate fee and other required documentation including, but not limited to, references, employment verification, degree verification, and verification of examination and licensure, certification, or registration.

"Approval letter" means a written notice confirming an individual applicant's licensure or a person's approval by the board to offer a specific approved mold training course.

"ASTM" means the American Society for Testing and Materials.

"Department" means the Virginia Department of Professional and Occupational Regulation.

"Direct supervisor" means a licensed mold remediator supervisor who undertakes to supervise the activities of a licensed mold remediator worker and shall be physically present on the premises at all times while any licensed mold remediator worker under his supervision is engaged in the activities involving mold remediation.

"Discipline" means any one of the specific licenses of mold remediator worker, mold remediator supervisor, or mold inspector.

"Endorsement" means the recognition of licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as permitted by § 54.1-500 et seq. of the Code of Virginia.

"Financial interest" means financial benefit accruing to an individual or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership exceeds 3.0% of the total equity of the business; (ii) annual gross income that exceeds or may be reasonably anticipated to exceed \$1,000 from ownership in real or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination of these, paid or provided by a

business that exceeds or may be reasonably expected to exceed \$1,000 annually; (iv) ownership of real or personal property if the interest exceeds \$1,000 in value and excluding ownership in business, income, salary, other compensation, fringe benefits, or benefits from the use of property.

"Guest instructor" means an individual designated by an approved mold training provider's training manager or primary instructor to provide instruction specific to a component of an approved mold training course.

"IAQA" means the Indoor Air Quality Association.

"IEC" means the International Electrotechnical Commission.

"IICRC" means the Institute of Inspection, Cleaning, and Restoration Certification.

"Instructor" means a person designated by an approved mold training provider who instructs one or more approved mold training courses. This definition excludes guest instructors.

"ISO" means the International Organization for Standardization.

"Late renewal" means a period of time during which a regulant may renew a license, certificate, or registration after its expiration date by paying an established fee without having to meet additional requirements.

"Licensed mold inspector" means any individual who meets the requirements of this chapter and is granted a license by the board to conduct mold inspections and mold assessments.

"Licensed mold remediator supervisor" means any individual who meets the requirements of this chapter and is granted a license by the board to conduct and supervise mold remediations.

"Licensed mold remediator worker" means any individual who meets the requirements of this chapter and is granted a license by the board to conduct mold remediations.

"Licensee" means any person as defined by § 54.1-500 of the Code of Virginia who has been issued and holds a currently valid license as a mold remediator worker, mold remediator supervisor, or mold inspector under this chapter.

"NADCA" means the National Air Duct Cleaners Association.

"Phase I Environmental Site Assessment" means an environmental site assessment as defined in ASTM standard E-1527-05.

"Professional engineer" means an individual currently licensed in the Commonwealth of Virginia as a professional engineer.

"Reciprocity" means the recognition of licenses or certificates issued by other states, the District of Columbia, or

any territory or possession of the United States as permitted by § 54.1-500 et seq. of the Code of Virginia.

"Refresher course" means a specific approved mold training course established by this chapter that must be periodically completed to maintain an individual's license in a single discipline.

"Regulant" means a licensee or an approved mold training provider.

"Renewal" means the process and requirements for periodically approving a regulant to continue practicing.

"Substantially equivalent" means requirements that do not conflict with and are at least as rigorous as this chapter and supporting statutes of the board.

"Training hour" means at least 50 minutes of actual instruction including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or hands-on experience.

Part III
Entry

18VAC15-60-30. Application procedures.

A. All applicants seeking licensure or training course approval shall submit an application with the appropriate fee specified in 18VAC15-60-100. Application shall be made on forms provided by the department.

B. By signing the application or submitting it electronically to the department, the applicant certifies that he has read and understands the board's statutes and regulations.

C. The receipt of an application and the deposit of fees by the board does not indicate approval by the board.

D. The board may make further inquiries and investigations with respect to the applicant's qualifications to confirm or amplify information supplied.

E. Applicants will be notified if their application is incomplete. Applicants who fail to complete the process within 12 months of the date of the department's receipt of the original application shall submit a new application and fee.

18VAC15-60-40. Qualifications for licensure - individuals.

A. All applicants shall meet all entry requirements in effect at such time that the application is received by the department.

1. Name. The applicant shall disclose his full legal name.
2. Age. The applicant shall be at least 18 years old.
3. Address. The applicant shall disclose a physical address. A post office box is only acceptable when a physical address is also provided.
4. Specific entry requirements.

a. Mold remediator worker. Each individual applying for an initial mold remediator worker license shall provide proof of successful completion of an initial mold remediator worker course from a board-approved mold training provider. The training must have been completed within 12 months of the date that the initial license is issued by the board.

b. Mold remediator supervisor.

(1) Provide proof of successful completion of an initial mold remediator supervisor course from a board-approved mold training provider. The training must have been completed within 12 months of the date that the initial license is issued by the board.

(2) Provide proof of one year of experience in a mold or another related environmental remediation field.

c. Mold inspector.

(1) Provide proof of successful completion of an initial mold inspector course from a board-approved mold training provider. The training must have been completed within 12 months of the date that the initial license is issued by the board.

(2) Provide evidence of experience of performing mold inspections including the activities as defined in this chapter. The amount of experience is dependent on the applicant's education as follows:

(a) An applicant with a bachelor's degree in engineering, architecture, industrial hygiene, physical science, or a related field shall have at least six months of experience and have completed a minimum of five mold inspections;

(b) An applicant with a two-year associate's degree in engineering, architecture, industrial hygiene, physical science, or a related field shall have at least 12 months of experience and have completed a minimum of 10 mold inspections; or

(c) An applicant with a high school diploma or equivalent shall have at least 24 months of experience and have completed a minimum of 15 mold inspections.

5. Experience verification. Each application for mold remediator worker, mold remediator supervisor, and mold inspector shall include a document signed by the applicant's supervisor that verifies the applicant's experience. Applicants who are self employed may submit a copy of three completed mold inspections in lieu of a signed document from a supervisor.

6. Education verification. For verification of a high school diploma or equivalent, a copy of the diploma or equivalent must accompany the application. College degrees must be verified by one of the following:

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a. Completing an education verification form provided by the board that shall be sent directly from the school to the department; or

b. The board's receipt of official transcripts from the college or university.

7. Training verification. Each application for mold remediator worker, mold remediator supervisor, and mold inspector shall include a copy of the certificate of completion from the initial training course that shall be specific to the discipline of the license being applied for.

8. Convictions. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose all convictions, in any jurisdiction, of all misdemeanors and felonies. Any plea of nolo contendere shall be considered a conviction for the purpose of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

9. Disciplinary action. Each applicant shall disclose any disciplinary action taken in any jurisdiction, including Virginia, in connection with the applicant's environmental remediation practice including, but not limited to, monetary penalties, fines, suspension, revocation, or surrender of a license in connection with a disciplinary action.

10. Standards of practice and conduct. Applicants shall be in compliance with the standards of practice and conduct set forth in this chapter as applicable at the time of application to the board, while the application is under review by the board, and at all times when the license is in effect.

11. Standing. The applicant shall be in good standing in every jurisdiction where licensed, certified, or authorized and the applicant shall not have had a license, certification, or authorization that was suspended, revoked, or surrendered in connection with any disciplinary action in any jurisdiction prior to applying for licensure in Virginia. The board, at its discretion, may deny licensure or approval to any applicant based on disciplinary action by any jurisdiction.

B. Applicants shall have one year from the date of the board's receipt of the application and fee to correct any deficiencies and provide the board with all requisite documentation and information. Applications not completed within one year of the date of the board's receipt of the application shall not be further considered by the board for approval. The applicant shall be required to submit to the board a new application and fee.

18VAC15-60-50. Qualifications for approval as a mold training provider.

A. Persons requesting approval as a mold training provider to offer courses to prepare applicants for initial licensure, as well as to prepare applicants and licensees for continued licensure, shall meet the requirements established by this chapter before being granted approval to offer an approved mold training course.

B. A completed application submission shall consist of all information required by this section. Receipt of an application by the department in no way indicates approval of a training course.

C. All training courses shall be discipline-specific. An applicant may seek approval to offer initial or refresher courses in any of the license disciplines as defined in this chapter. A separate application shall be made for each course. Application shall be made on forms provided by the board and shall include the following:

1. Training provider's business name, physical address, mailing address, and phone number.

2. The course discipline and type, initial or refresher, for which approval is sought.

3. A syllabus that contains the complete training course curriculum.

4. A copy of all training course materials including, but not limited to, student manuals, instructor notebooks, handouts, and training aids.

5. A copy of all examinations used and the corresponding answer sheets.

6. A description of all facilities and equipment to be used for lecture and hands-on training as applicable to the course.

7. A narrative that states how the training course meets the requirements for approval in the following areas:

a. Length of training in hours.

b. Examination content, length, format, and passing score.

c. Topics covered in the training course.

d. Examination administration and integrity.

8. The names of each instructor including resumes, education, training, experience, and certifications relevant to his qualifications to teach the course.

9. An example of a certificate that will be issued to students who successfully complete the approved mold training course. The certificate shall contain the information listed in 18VAC15-60-210.

10. A statement signed by the training manager that certifies that the training course meets the minimum requirements established in this chapter.

D. An approved mold training course must be approved by the board before its certificates shall be accepted by the board to satisfy initial licensure or renewal licensure training requirements. The completion of a mold training course that occurs prior to a course's board approval shall not be used to satisfy board licensure training requirements.

E. Each training course shall be conducted in compliance with this chapter to qualify for and maintain its board approval.

F. Online courses shall not be accepted by the board for approval.

18VAC15-60-60. Licensure or training course approval by reciprocity.

A. The board may issue a license to perform mold inspections or mold remediation to any applicant who is certified by a national or state professional mold inspectors or mold remediators association approved by the board, provided that the requirements for the applicant's class of membership in such association are equal to or exceed the requirements established by the board for all applicants.

B. The board may grant approval to conduct mold training courses to any applicant who is approved in another state provided that the requirements of that state's approval are equal to or exceed the requirements established by the board for mold training course approval.

18VAC15-60-70. Licensure by comity.

A person holding a current license, certificate, or registration to engage in the practice of mold inspection or mold remediation issued to the applicant by another state, the District of Columbia, or any territory or possession of the United States based on requirements that do not conflict with and are at least as rigorous as this chapter and supporting statutes of this board that were in effect at the time of original licensure, certification, or registration may be licensed. If the applicant does not meet the requirements for licensure in Virginia, then the applicant shall meet the entry requirements that are current at the time the completed application for comity is received in the board's office.

18VAC15-60-80. Application denial.

The board may refuse initial licensure due to an applicant's failure to comply with entry requirements or for any of the reasons that it may discipline a regulant. The board, at its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia. The denial is considered to be a case decision and is subject to appeal under Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

Part IV
Fees

18VAC15-60-90. General fee requirements.

All fees are nonrefundable and shall not be prorated. The date on which the fee is received by the department or its agent will determine whether the fee is on time. Checks or money orders shall be made payable to the Treasurer of Virginia.

18VAC15-60-100. Application fees.

Fee Type	Fee Amount	When Due
Application for mold remediator worker	\$25	With application
Application for mold remediator supervisor	\$25	With application
Application for mold inspector	\$25	With application

18VAC15-60-110. Renewal fees.

Fee Type	Fee Amount	When Due
Renewal of mold remediator worker license	\$25	With renewal application
Renewal of mold remediator supervisor license	\$25	With renewal application
Renewal of mold inspector license	\$25	With renewal application
Late renewal of mold remediator worker license (includes a \$25 late renewal fee in addition to the regular \$25 renewal fee)	\$50	With renewal application
Late renewal of mold remediator supervisor license (includes a \$25 late renewal fee in addition to the regular \$25 renewal fee)	\$50	With renewal application
Late renewal of mold inspector license (includes a \$25 late renewal fee in addition to the regular \$25 renewal fee)	\$50	With renewal application

Part V
Renewal

18VAC15-60-120. Renewal required.

A. Each individual mold remediator worker, mold remediator supervisor, and mold inspector license issued

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under this chapter shall expire one year from the last day of the month in which it was issued.

B. A fee shall be required for renewal as specified in 18VAC15-60-110.

18VAC15-60-130. Procedures for renewal.

A. The department shall mail a renewal notice to each licensee at the licensee's last known address. The notice shall outline the procedures for renewal and the renewal fee amount. Failure to receive the notice shall not relieve the licensee of the obligation to renew in a timely fashion.

B. Prior to the expiration date shown on the individual's current license, the individual desiring to renew that license shall provide evidence of meeting the refresher training requirement for license renewal as established in 18VAC15-60-140 and the appropriate fee specified in 18VAC15-60-110. The board will only accept mold training courses that were specifically approved by the board at the time that the training was completed. A copy of the training certificate documenting the successful completion of the refresher training for the license discipline being renewed shall accompany the renewal notice and fee.

C. By renewing the license, the regulant is certifying his continued compliance with the Standards of Conduct and Practice in Part X (18VAC15-60-160 et. seq.) of this chapter.

D. Refresher training certificates shall only be used once to renew an individual license.

E. Each license that is not renewed within 30 days of the expiration date on the license shall be subject to late renewal fees as established in 18VAC15-60-110.

F. Any licensee who fails to renew his license within six months after the expiration date on the license shall not be permitted to renew and shall apply as a new applicant and meet all entry requirements as established by this chapter.

18VAC15-60-140. Qualifications for renewal.

A. Licensees desiring to maintain an individual license shall satisfactorily complete a board-approved mold refresher training course not less than once every 12 months for inspector and remediation supervisor, and not less than once every 24 months for remediation worker. It is the licensee's responsibility to ensure the board's receipt of the proof of training completion at the time of license renewal.

B. Refresher training shall be specific to the discipline of the license held.

C. The board shall renew an individual license for an additional 12 months upon receipt of a renewal application, proof of training completion, and renewal fee in accordance with 18VAC15-60-130.

D. A licensee's submission of the renewal application and renewal fee to the board shall constitute a certification that the licensee is in full compliance with the board's regulations.

18VAC15-60-150. Board discretion to deny renewal.

The board may deny renewal of a license for the same reasons as it may refuse initial licensure or discipline a regulant. The board may deny renewal of a license if the regulant has not met the terms of an agreement for licensure, has not satisfied all sanctions, or has not fully paid any monetary penalties or costs imposed by the board.

Part VI

Disciplinary Action and Reporting Requirements

18VAC15-60-160. Grounds for disciplinary action.

A. The board shall have the authority to fine any licensee; deny renewal of, suspend, or revoke any license issued by the board; deny application for any individual license or approval as a provider of a mold training course; and withdraw board approval of the provider of a mold training course provided for under Chapter 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia for:

1. Violating or inducing another person to violate any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), or 5 (§ 54.1-500 et seq.) of Title 54.1 of the Code of Virginia, or any of the provisions of this chapter.
2. Obtaining an individual license or approval as a mold training provider, or approval as a training manager or instructor through fraudulent means.
3. Altering, falsifying, or issuing a fraudulent Virginia individual mold license or a training certificate.
4. Violating any provision of any federal, state, or local law or regulation pertinent to mold remediation and mold inspection.
5. Having been found guilty by the board, another regulatory authority, or a court of any misrepresentation in the course of performing his mold inspection or remediation duties.
6. Subject to the provisions of § 54.1-204 of the Code of Virginia, having been convicted or found guilty, regardless of adjudication, in any jurisdiction of the United States of any felony or of any misdemeanor, there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this chapter. A certified copy of the final order, decree, or case decision by a court or regulatory agency with lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such conviction or discipline.

7. Failing to notify the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty of any felony or of any misdemeanor.

8. Negligence or a continued pattern of incompetence in the practice of the discipline in which an individual mold license is held.

9. Failing or neglecting to send any information or documentation that was requested by the board or its representatives.

10. Failing to comply with 18VAC15-60-170.

11. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

B. Any person whose license, approval as a mold training provider, or approval as a training manager or instructor is revoked or withdrawn under this section shall not be eligible to reapply for a period of one year from the effective date of the final order of revocation or withdrawal of approval. The person shall meet all education, experience, training, and documentation requirements, complete the application, and submit the required fee for consideration as a new applicant.

C. The board shall conduct disciplinary procedures in accordance with §§ 2.2-4019 and 2.2-4021 of the Administrative Process Act.

18VAC15-60-170. Maintenance of license.

A. A regulant shall report all changes of address to the board in writing within 30 calendar days of the change and shall return the license to the board. A physical address is required for each license. A post office box is acceptable only when a physical address is also provided. If the regulant holds more than one license issued by the board, the regulant shall inform the board of all licenses affected by the address change.

B. A regulant shall operate under the name in which the license is issued. Regulants shall report any change of individual name to the board in writing within 30 calendar days of the name change and shall return the license to the board. If the regulant holds more than one license issued by the board, the regulant shall inform the board of all licenses affected by the name change.

C. No license issued by the board shall be assigned or otherwise transferred.

18VAC15-60-180. Notice of adverse action.

Regulants shall notify the board of the following actions:

1. Any disciplinary action taken by another jurisdiction, board, or administrative body of competent jurisdiction including, but not limited to, any reprimand, revocation, suspension or denial, monetary penalty, or requirement for remedial education or other corrective action taken on any

license, certification, registration, or authorization of the regulant.

2. Any voluntary surrendering of a license, certificate, registration, approval, or authorization done in connection with an open disciplinary action in another jurisdiction.

3. Any conviction or finding of guilt, regardless of adjudication or deferred adjudication, of any felony or of any misdemeanor. Any plea of nolo contendere shall be considered a conviction for the purpose of this section.

All notices must be made to the board in writing within 30 days of the action. A copy of the order or other supporting documentation must accompany the notice. The record of conviction, finding, or case decision shall be considered prima facie evidence of a conviction or finding of guilt.

18VAC15-60-190. Response to inquiry and provision of records.

A. A regulant must promptly respond to the board or any of its agents regarding a complaint.

B. The regulant must promptly produce to the board or any of its agents, any document, book, record, or copy thereof in which the regulant was involved or that is in the regulant's possession or control concerning a transaction covered by this chapter, or for which the regulant is required to maintain records.

C. A regulant shall not provide a false, misleading, or incomplete response to the board or any of its agents seeking information in the investigation of a complaint filed with the board.

Part VII

Training Provider and Training Course Requirements

18VAC15-60-200. Training provider personnel.

A. Training managers.

1. Approved mold training course providers shall designate a board-approved training manager to administer the mold training courses offered by the provider. The training manager shall meet the following requirements:

a. Have a minimum of two years experience in teaching adults; or

b. Have a minimum of three years experience in the mold remediation industry.

2. Training managers shall be responsible for ensuring that the training provider complies at all times with the requirements of this chapter. Training managers shall also be responsible for:

a. Maintaining the validity and integrity of each course examination to ensure that it accurately evaluates the student's knowledge and retention of the course topics.

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b. Designating course instructor(s).

c. Developing and implementing a quality control plan. The plan shall be used to maintain and improve the quality of the approved mold training courses as advances in the industry are made. This plan shall contain at least the following elements:

(1) Procedures for periodic revision of training materials and course test to reflect innovations in the field.

(2) Procedures for the training manager's annual review of instructor competency.

3. Any training manager who intends to also serve as an instructor shall meet the requirements of subsection B of this section.

B. Training course instructors.

1. Mold training course instructors are responsible for the organization of the course and oversight of the teaching of all course material.

2. Board-approved mold training courses shall only utilize board-approved instructors to teach a mold training course. All instructors shall have a minimum of 24 hours of mold specific training and two years of experience in the mold remediation or mold assessment industry.

3. Guest instructors may be utilized to assist in teaching a mold training course and shall be exempt from the instructor qualifications in this subsection. Guest instructors are limited to no more than two hours of instruction per course per day.

C. Documentation of instructors and training manager.

1. The following documents shall be recognized by the board as proof that training managers and instructors meet the relevant work experience and training requirements specifically listed in this section:

a. Signed letters of reference or verification letters from the applicant's supervisor as proof of meeting the work experience requirements.

b. Certificates from mold-specific training courses as proof of meeting the training requirements.

2. Instructor qualifications shall be reviewed and approved by the board prior to the instructor teaching an approved mold training course.

3. Instructors will be notified in writing of their approval to teach mold training courses.

18VAC15-60-210. Training course general requirements.

A. In no case shall actual mold training exceed eight hours in a 24-hour period.

B. The total hours of actual training for any training course, including examination, shall be completed within a continuous two-week time frame, from start to finish.

C. All initial and refresher approved mold training courses shall be discipline specific.

D. Approved mold remediator supervisor and mold inspector training courses shall be taught in English.

E. Prior to the start of any approved mold training course, the training provider shall prepare a course outline that shall be distributed to each student at the start of the course. The outline shall contain the following minimum information:

1. Training course title and total hours of training;

2. Course instructor(s); and

3. Daily schedule specifying the time of each training topic, activity, break, and the examination.

F. Approved mold training course providers shall issue a course completion certificate to each individual who attends the course in full and successfully completes all course requirements. The certificate shall include the following information:

1. Training course title and length of training in hours. For mold remediator worker courses completed in languages other than English, the certificate shall indicate the language of the course.

2. Name, address, and telephone number of the training provider.

3. Complete address of training location.

4. Name and address of the student.

5. Unique certificate number generated by the training provider.

6. Statement affirming that the student attended the course and successfully completed its examination.

7. Examination date.

8. Training certificate expiration date. The training certificate expiration date for any mold remediator supervisor or mold inspector course shall be 12 months from the last day of the month when the course was completed. For any mold remediator worker course, the certificate expiration date shall be 24 months from the last day of the month when the course was completed.

9. Signature and name of the approved mold training course provider's training manager and course instructor. The signatures may be printed facsimiles.

18VAC15-60-220. Worker course requirements.

A. The mold remediator worker initial course shall include lectures, demonstrations, and other activities directly related to the duties of a mold remediator worker.

B. The mold remediator worker initial course shall last a minimum of 16 hours with a minimum of six hours of hands-on training and shall address the following topics:

1. Role and responsibilities of a mold remediation worker.
2. Background information on mold including health effects.
3. Relevant federal, state, and local regulatory requirements related to mold remediation activities including the requirements of this chapter.
4. Employee personal protective equipment.
5. Workplace safety hazards, including other environmental hazards such as lead and asbestos.
6. Knowledge of building construction as related to eliminating moisture problems including elements of airflow, mechanisms of moisture and heat flow, humidity, the building envelope, and porous and nonporous materials.
7. Current relevant industry work practices.
8. Course review of key concepts.
9. Examination.

C. The mold remediator worker refresher course shall last a minimum of four hours and include the following topics:

1. Comprehensive review of the initial course topics with specific emphasis and update on current mold remediation industry standards.
2. Examination.

18VAC15-60-230. Supervisor course requirements.

A. The mold remediator supervisor initial course shall include lectures, demonstrations, and other activities directly related to the duties of a mold remediator supervisor.

B. The mold remediator supervisor initial course shall last a minimum of 24 hours with a minimum of eight hours of hands-on training and shall address the following topics:

1. Role and responsibilities of a mold remediation supervisor.
2. Background information on mold including health effects.
3. Relevant federal, state, and local regulatory requirements related to mold remediation activities, including the requirements of this chapter.
4. Employee personal protective equipment.

5. Workplace safety hazards, including other environmental hazards such as lead and asbestos.

6. Knowledge of building construction as related to eliminating moisture problems, including elements of airflow, mechanisms of moisture and heat flow, humidity, the building envelope, and porous and nonporous materials.

7. Current relevant industry work practices, including the use and reading of moisture meters, duct cleaning, and use of drying equipment.

8. Development and implementation of an occupant protection plan and a remediation activities report.

9. Liability and insurance issues relating to mold remediation.

10. Overview of sampling and mold inspection report interpretation.

11. Contract specification key elements.

12. Recordkeeping for mold remediation projects.

13. Supervisory techniques for mold remediation activities including implementation of required work practices and prevention of unsafe work practices.

14. Course review of key concepts.

15. Examination.

C. The mold remediator supervisor refresher course shall last a minimum of four hours and include the following topics:

1. Comprehensive review of the initial course topics with specific emphasis and update on current mold remediation industry standards.
2. Review of contract specifications, mold inspection reports, and other pertinent records.
3. Examination.

18VAC15-60-240. Inspector course requirements.

A. The inspector initial course shall include lectures, demonstrations, and other activities directly related to the duties of a mold inspector.

B. The mold inspector initial course shall last a minimum of 24 hours with a minimum of four hours of hands-on training and shall address the following topics:

1. Role and responsibilities of a mold inspector.
2. Background information on mold including health effects.
3. Relevant federal, state, and local regulatory requirements related to mold remediation activities, including the requirements of this chapter.

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4. Employee personal protective equipment.
5. Workplace safety hazards, including other environmental hazards such as lead and asbestos.
6. Knowledge of building construction as related to eliminating moisture problems, including elements of airflow, mechanisms of moisture and heat flow, humidity, the building envelope, and porous and nonporous materials.
7. Current relevant industry work practices, including the use and reading of moisture meters and an understanding of HVAC systems.
8. Pre-inspection planning and review of previous inspection records.
9. Mold inspection report interpretation and recordkeeping.
10. Liability and insurance issues relating to mold inspection.
11. Inspection and sampling techniques for mold and assessment of the condition of mold.
12. Designing a mold remediation plan to be carried out by a mold remediation supervisor and workers.
13. Public/employee/building occupant relations.
14. Course review of key concepts.
15. Examination.

C. The mold inspector refresher course shall last a minimum of four hours and include the following topics:

1. Comprehensive review of the initial course topics with specific emphasis and update on current mold inspection and remediation industry standards.
2. Review of mold inspection reports, remediation plans, and other pertinent records related to mold inspection.
3. Examination.

18VAC15-60-250. Examinations.

A. Upon the conclusion of instruction and training course activities, the training provider shall administer an examination to the students. The purpose of the examination is to measure the overall effectiveness of the training by testing the student's knowledge and retention of the topics covered during the course.

B. Course examinations shall be administered by the course instructor or training manager and must cover the topics included in the training course.

C. All examinations shall be closed-book, multiple choice questions, with a passing score of 70% or higher. The requirements for the examination of each course shall be as follows:

1. The mold remediator worker initial examination shall consist of 50 items.
2. The mold remediator supervisor initial examination shall consist of 100 items.
3. The mold inspector initial examination shall consist of 100 items.
4. All refresher course examinations shall consist of 50 items.

D. The examination for all mold remediator supervisor and mold inspector courses shall be read and answered in writing by the student. The examination for any mold remediator worker course may be given to the student orally only if the student is unable to read and answer the examination in writing.

E. Students shall be allowed two attempts to pass the examination immediately following the conclusion of course instruction and activities. If the student is unable to pass the examination after two attempts, the course shall be repeated in its entirety before the student shall be allowed to take the examination again.

Part VIII

Standards of Practice and Conduct for Approved Mold Training Programs

18VAC15-60-260. Recordkeeping.

A. Each approved mold training provider shall maintain and make available upon request from the board the following records:

1. All documents specified in 18VAC15-60-200 that demonstrate the qualifications of the training manager and instructors.
2. Copies of each current course outline and training certificate as specified in 18VAC15-60-210.
3. Copies of each course examination and applicable answer keys.
4. Results of each student's course examination and a copy of each student's course completion certificate.
5. Copies of any of the material that was submitted to the board as a part of the training provider's original application for board approval.
6. Any other material not listed in this chapter that is utilized by the training provider in any of the training courses for which it is approved.

B. Training providers shall maintain the above records for a minimum period of three years.

18VAC15-60-270. Changes to approved training providers.

A. When an approved mold training provider offering any approved mold training course has a change of ownership, the new owner shall make written notification to the board within 30 days of the change of ownership. The new owner must comply with the requirements of this chapter in order to maintain approval.

B. After a mold training course has been approved, any substantial changes in the training course shall be submitted to the board for review and approval prior to the continuation of the approved mold training course, which includes the following:

1. Course curriculum.
2. Course examination.
3. Course training materials.
4. Training manager and instructors.
5. Certificate of completion.

C. The board shall communicate its approval or disapproval of any changes in the same manner as for initial applications for course approval.

D. The approved mold training provider shall notify the board no less than 30 days prior to relocating its business, transferring its records, changing its telephone number, changing its course instructors, or ceasing its business operations.

18VAC15-60-280. Status of approval.

The board may withdraw approval of any mold training course for the following reasons:

1. The training program manager, instructors, or training courses no longer meets the standards established in this chapter.
2. The board determines that the provider is not conducting the training in a manner that meets the requirements as set forth in this chapter.
3. The training provider fails to comply with a board request for documentation or other materials from the provider.

Part IX

Standards for Conducting Mold Inspection and Remediation Activities

18VAC15-60-290. General standards of individual practice and conduct.

A. Individuals conducting mold inspection or mold remediation activities shall comply with the work practice standards enumerated in this chapter.

B. Individuals conducting mold inspections or mold remediations shall comply with § 54.1-1100 et seq. of the Code of Virginia as appropriate.

C. Inspectors and remediators shall comply with all other relevant local, state, and federal regulations including 29 CFR Part 1910, 29 CFR Part 1926, and other regulations as applicable to mold inspection and remediation.

D. Upon encountering any regulated hazardous materials for which the remediator or inspector is not qualified to handle including, but not limited to, asbestos and lead, he shall inform the homeowner, building owner, or his agent, as appropriate, and advise of the need for services of any requisite qualified professionals.

18VAC15-60-300. Mold remediation workers.

A licensed mold remediator worker shall conduct mold remediation activities as directed by the mold remediation supervisor.

18VAC15-60-310. Mold remediator supervisor.

A. A licensed mold remediator supervisor shall be physically present at all times that mold remediation activities are being conducted.

B. The licensed mold remediation supervisor shall ensure that all remediation activities are conducted according to the requirements of this chapter and all other applicable federal, state, and local laws and regulations.

C. The licensed mold remediator supervisor shall be responsible for following the remediation scope of work.

D. The licensed mold remediator supervisor shall keep a daily log of mold remediation activities, which shall include the following minimum information:

1. The name and license number of each mold remediator worker that participated in whole or in part of the remediation.
2. The start and end dates of the remediation.
3. Records of any readings taken by the workers or supervisor as part of the remediation.

E. Upon completion of the remediation, the licensed mold remediator supervisor shall sign a statement declaring that the remediation scope of work has been completed. The statement shall be retained as part of the record for the mold remediation.

18VAC15-60-320. Mold inspector.

The duties and functions of a mold inspector shall include, but not be limited to, determining the presence and location of mold, determining the condition of mold, sampling of mold, designing a site-specific mold remediation plan, or making recommendations for additional work by qualified professionals to address issues beyond the scope of the mold

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inspector. Licensed mold inspectors shall conduct inspection activities in accordance with the following:

1. The sampling of mold shall be conducted using documented methodologies that incorporate adequate quality control procedures;

2. Collected mold samples shall be sent to a laboratory capable of performing mold analysis that is accredited or certified by an organization that meets international program requirements established under ISO/IEC 17011;

3. The licensed inspector shall prepare an inspection report after his completion of the mold inspection. The report shall include the following minimum information:

a. Dates of the start and finish of each inspection;

b. Physical address of the building receiving the inspection;

c. Name and address of the building owner;

d. Name, signature, and license number of each licensed inspector conducting testing;

e. Name, address, and telephone number of the firm employing each inspector;

f. Each device and sampling procedure employed for mold inspection, including instrument calibration data;

g. Specific locations of each mold sample taken;

h. Location and type of all mold identified during inspection;

i. Copy of the laboratory report containing the results of all mold sampled from the inspection;

j. Explanation of the potential source and cause of the mold or recommendations for further investigation of the mold intrusion by qualified professionals; and

k. Mold remediation plan, if contracted to perform this duty by the building owner or his authorized agent;

4. All inspection reports and remediation plans shall be maintained by the licensed inspector who prepared them for at least three years after the date of the completion of the inspection. The licensed inspector shall provide copies of the reports and plans to the building owner or to the person that contracted for his services; and

5. If contracted to perform a post-remediation verification by the building owner or his authorized agent, the licensed mold inspector shall use documented methodologies that incorporate adequate quality control procedures.

a. Following a remediation, a visual inspection shall be performed by the licensed inspector to determine if there is any evidence of the presence of mold.

b. If mold is still present contrary to the specifications of the remediation plan, these conditions shall be remediated prior to the continuation of the post-remediation inspection.

Part X

General Standards of Practice and Conduct

18VAC15-60-330. Responsibility to the public.

The primary obligation of the licensee shall be to the public. If the licensee's judgment is overruled under circumstances when the safety, health, property, or welfare of the public is endangered, the licensee shall inform the employer or client of the possible consequences and notify the appropriate authorities if the situation is not resolved. The licensee shall take such action only when his authority to correct a problem has been ignored or overruled.

18VAC15-60-340. Public statements.

A. The licensee shall be truthful in all matters relating to the performance of mold remediation and mold inspection services.

B. When serving as an expert or technical witness, the licensee shall express an opinion only when it is based on an adequate knowledge of the facts in issue and on a background of technical competence in the subject matter. Except when appearing as an expert witness in court or an administrative proceeding when the parties are represented by counsel, the licensee shall issue no statements, reports, criticisms, or arguments on matters relating to practices that are inspired or paid for by an interested party or parties unless the licensee has prefaced the comment by disclosing the identities of the party or parties on whose behalf the licensee is speaking, and by revealing any self-interest.

C. Licensees or applicants for license shall not knowingly make a materially false statement, submit falsified documents, or fail to disclose a material fact requested in connection with an application for licensure or licensure renewal submitted to the board by any individual.

18VAC15-60-350. Solicitation of work.

In the course of soliciting work:

1. The licensee shall not bribe;

2. The licensee shall not falsify or permit misrepresentation of the licensee's work or an associate's academic or professional qualifications, nor shall the licensee misrepresent the degree of responsibility for prior assignments;

3. Materials used in the solicitation of employment shall not misrepresent facts concerning employers, employees, associates, joint ventures, or past accomplishments of any kind; and

4. Materials used in the solicitation of services shall not misrepresent facts of approval or any federal, state, or local requirements.

18VAC15-60-360. Professional responsibility.

A. The licensee or approved mold training provider shall, upon request or demand, produce to the board, or any of its representatives, any plan, document, book, record, or report in his possession concerning a transaction covered by this chapter, and shall cooperate in the investigation of a complaint filed with the board against a licensee or approved mold training provider.

B. A licensee or approved mold training provider shall not use the design, plans, or work of another licensee or approved mold training provider without the original professional's knowledge and consent and, after consent, a thorough review to the extent that full responsibility shall be assumed by the user.

C. The mold inspector shall not disclose any information concerning the results of the mold inspection without the approval of the client for whom the mold inspection was performed. However, the mold inspector may disclose information in situations where imminent danger exists to life or health.

D. Approved mold training providers shall admit board representatives for the purpose of conducting an on-site audit or any other purpose necessary to evaluate compliance with this chapter to maintain board approval and other applicable laws and regulations.

18VAC15-60-370. Good standing in other jurisdictions.

A. Licensees that perform mold remediation work or inspections in other jurisdictions and approved mold training providers, training managers, or instructors that offer mold training in other jurisdictions shall be in good standing in every jurisdiction where licensed, certified, or approved by an authorizing agency and shall not have had a license, certification, or approval suspended, revoked, or surrendered in connection with any disciplinary action.

B. Licensees and approved mold training providers, training managers, and instructors shall notify the board in writing no later than 10 days after the final disciplinary action taken by another jurisdiction against their license or approval to perform mold remediation or inspection activities or offer mold training.

C. Licensees may be subject to disciplinary action for disciplinary actions taken by another jurisdiction. Approved mold training providers, training managers, and instructors may be subject to withdrawal of board approval to offer mold training as a result of disciplinary actions taken by another jurisdiction.

18VAC15-60-380. Conflict of interest.

A. No licensed mold remediator worker or mold remediator supervisor shall perform a mold remediation project if the mold remediation is to be performed by any individual with an employer/employee relationship with, or financial interest in, the licensed mold inspector who conducted the inspection of the property.

B. No licensed mold inspector shall perform a mold inspection if the inspection is to be performed by any individual with an employer/employee relationship with, or financial interest in, the licensed mold remediation worker or licensed mold remediation supervisor who conducted a remediation of the property.

C. No licensed mold remediator worker or supervisor or licensed mold inspector shall accept compensation, financial or otherwise, from more than one interested party for the same service on the same property without the written consent of all interested parties.

D. The licensee shall not accept commissions or allowances from nor offer to, directly or indirectly, other parties dealing with the client in connection with work for which the licensee is responsible. Additionally, the licensee shall not enter into any financial relationship with any party that may compromise the licensee's commitment to the best interest of his client.

E. The mold inspection shall not be used as a tool by the licensee to solicit or obtain work in another field, except for additional diagnostic inspections or testing.

18VAC15-60-390. Responsibilities of a licensee.

A. A licensee or approved mold training provider shall respond to an inquiry from the board or any of its agents within 15 business days.

B. A licensee shall produce to the board or any of its agents, upon demand, any written reports and supporting documentation concerning any mold remediation or mold inspection in which the licensee was involved, as well as any other records that the licensee shall maintain as required by this chapter.

C. A licensee shall keep the board informed of his current home address at all times. Changes of address shall be reported to the board in writing within 30 calendar days after such change. A physical address is required; a post office box is only acceptable when provided in addition to the licensee's physical address. The board shall not be responsible for the licensee's failure to receive the board's correspondence as a result of the licensee's failure to inform the board of his correct address.

D. A licensee shall notify the board in writing of a name change within 30 calendar days after any change in the licensee's legal name. Such notification shall be accompanied

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by a copy of a marriage certificate, divorce decree, court order, or other documentation that verifies the name change and was issued by an organization with the authority to make such a change.

E. A licensee shall retain all records pertaining to mold remediations and mold inspections performed including, but not limited to, all written reports and supporting documentation for a period of three years from the date of the completion of the mold remediation or mold inspection.

DOCUMENTS INCORPORATED BY REFERENCE
(18VAC15-60).

ASTM E1527-05, Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process, ASTM International.

ISO/IEC 17011:2004(E), Conformity Assessment - General Requirements for Accreditation Bodies Accrediting Conformity Assessment Bodies, International Organization for Standardization.

VA.R. Doc. No. R10-2048; Filed October 13, 2010, 1:14 p.m.

BOARD FOR BARBERS AND COSMETOLOGY

Proposed Regulation

Title of Regulation: **18VAC41-20. Barbering and Cosmetology Regulations (amending 18VAC41-20-140).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

December 15, 2010 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, 2nd Floor - Training Room 1, Richmond, VA

Public Comment Deadline: January 7, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by §§ 54.1-113, 54.1-201, 54.1-304, and 54.1-308 of the Code of Virginia. To comply with these statutes, the Board for Barbers and Cosmetology evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113 requires that, following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation shows expenses allocated to it for the past biennium to be more than 10% greater or less than moneys collected on

behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201 describes each regulatory board's power and duty to levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the department.

Section 54.1-304 describes the power and duty of the department director to collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board of Professional and Occupational Regulation, the regulatory boards, and the department shall be paid.

Section 54.1-308 provides for compensation of the department director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

Purpose: The intent of the proposed amendment is to increase licensing fees for regulants of the Board for Barbers and Cosmetology. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department of Professional and Occupational Regulation's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a barber, cosmetologist, nail technician, barber shop, cosmetology salon, nail salon, barber school, cosmetology school, or nail school license, or barber instructor, cosmetology instructor, or nail technician instructor certification, or temporary permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This delay could provide an opportunity for a dishonest barber, cosmetologist, nail technician, barber shop, cosmetology salon, nail salon, barber school, cosmetology school, nail school, barber instructor, cosmetology instructor, nail technician instructor, or temporary permit holder, while waiting for action to be taken by the board, to continue to work and harm additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead is funded almost entirely from revenue collected through applications for

licensure, renewals, examination fees, and other licensing fees. The department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The Board for Barbers and Cosmetology has no other source of revenue from which to fund its operations.

Substance: The existing regulations are being amended to increase the fees applicable to several licensing items, as follows:

- Barber license - from \$55 to \$75.
- Cosmetologist license - from \$55 to \$75.
- Nail technician license - from \$55 to \$75.
- Barber license by endorsement - from \$55 to \$75.
- Cosmetologist license by endorsement - from \$55 to \$75.
- Nail technician license by endorsement - from \$55 to \$75.
- Barber license renewal - from \$55 to \$75.
- Cosmetologist license renewal - from \$55 to \$75.
- Nail technician license renewal - from \$55 to \$75.
- Barber license reinstatement - from \$55 to \$75.
- Cosmetologist license reinstatement - from \$55 to \$75.
- Nail technician license reinstatement - from \$55 to \$75.
- Barber instructor certification - from \$60 to \$85.
- Cosmetology instructor certification - from \$60 to \$85.
- Nail technician instructor certification - from \$60 to \$85.
- Barber instructor certification by endorsement - from \$60 to \$85.
- Cosmetology instructor certification by endorsement - from \$60 to \$85.
- Nail technician instructor certification by endorsement - from \$60 to \$85.
- Barber instructor certification renewal - from \$60 to \$85.
- Cosmetologist instructor certification renewal - from \$60 to \$85.
- Nail technician instructor certification renewal - from \$60 to \$85.
- Barber instructor certification reinstatement - from \$60 to \$85.

- Cosmetologist instructor certification reinstatement - from \$60 to \$85.
- Nail technician instructor certification reinstatement - from \$60 to \$85.
- Barber shop license - from \$90 to \$115.
- Cosmetology salon license - from \$90 to \$115.
- Nail salon license - from \$90 to \$115.
- Barber shop license renewal - from \$90 to \$115.
- Cosmetology salon license renewal - from \$90 to \$115.
- Nail salon license renewal - from \$90 to \$115.
- Barber shop license reinstatement - from \$90 to \$115.
- Cosmetology salon license reinstatement - from \$90 to \$115.
- Nail salon license reinstatement - from \$90 to \$115.
- Barber school license - from \$120 to \$145.
- Cosmetology school license - from \$120 to \$145.
- Nail school license - from \$120 to \$145.
- Barber school to add a program - from \$60 to \$85.
- Cosmetology school to add a program - from \$60 to \$85.
- Nail school to add a program - from \$60 to \$85.
- Barber school license renewal - from \$120 to \$145.
- Cosmetology school license renewal - from \$120 to \$145.
- Nail school license renewal - from \$120 to \$145.
- Barber school license reinstatement - from \$120 to \$145.
- Cosmetology school license reinstatement - from \$120 to \$145.
- Nail school license reinstatement - from \$120 to \$145.

Issues: The primary issue for the proposed fee increase is the Department of Professional and Occupational Regulation's statutory requirement to comply with § 54.1-113 of the Code of Virginia (the Callahan Act) which requires the department to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. For the 2008-2010 biennium, the Board for Barbers and Cosmetology is expected to have a \$86,784 cash balance and a Callahan Act percentage of 1.5 and for the 2010-2012 biennium, the board is expected to incur a deficit of \$821,453 and a Callahan Act percentage of -13.2.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to an amount greater than previously anticipated. To avoid increasing the deficit the

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new fees will need to become effective early in the 2010-2012 biennium. Otherwise, the board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Barbers and Cosmetologists (Board) proposes to raise all classes of fees for the barbers, cosmetologists and nail technicians that are subject to the Board of Barbers and Cosmetology Regulations. The Board also proposes to change the regulatory text so that it is clear that licensees who reinstate their licenses must pay a renewal fee as well as a reinstatement fee.

Result of Analysis. The benefits likely exceed the costs for one of these proposed changes. For all other changes, costs likely exceed benefits.

Estimated Economic Impact. Currently, barbers, cosmetologist and nail technicians pay \$55 for initial licensure (either by application or endorsement), \$55 for biennial renewal and \$110 for reinstatement. The reinstatement fee is currently listed as \$55 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Barber teachers, cosmetology instructors and nail technician instructors pay \$60 for initial licensure (either by application or endorsement), \$60 for biennial renewal and \$120 for reinstatement. The reinstatement fee is currently listed as \$60 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Barber shops and cosmetology and nail technician salons must have a current facilities license in order to be open in the Commonwealth. Currently, an initial facilities license is \$90, biennial renewal of that license is \$90 and reinstatement is \$180. The reinstatement fee is currently listed as \$90 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Currently, barber, cosmetology and nail technician schools must pay \$120 for an initial license, \$120 for biennial license renewal and \$240 for reinstatement. The reinstatement fee is currently listed as \$120 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Schools may currently add another program for \$60.

The Board now proposes to raise fees for these categories of licensure. Under this proposal, current fees will increase between 28% and 42%. Below is a comparison table for current and proposed fees:

	FEE TYPE	CURRENT FEE	PROPOSED FEE
Barbers, Cosmetologists Nail Technicians	Initial Licensure by Application	\$55	\$75
	Initial Licensure by Endorsement	\$55	\$75
	Renewal	\$55	\$75
	Reinstatement	\$110	\$150
Cosmetology Instructors Nail Technician Instructors Barber Teachers	Initial Licensure by Application	\$60	\$85
	Initial Licensure by Endorsement	\$60	\$85
	Renewal	\$60	\$85
	Reinstatement	\$120	\$170
Cosmetology Salons Nail Technician Salons Barber Shops	Initial Application	\$90	\$115
	Renewal	\$90	\$115
	Reinstatement	\$180	\$230
Cosmetology Schools Nail Technician Schools Barber Schools	Initial Application	\$120	\$145
	Add Program	\$60	\$85
	Renewal	\$120	\$145
	Reinstatement	\$240	\$290

The Board reports that these fee increases are necessary in order to meet Callahan Act requirements for cash reserves. Specifically, the Board reports that it has incurred increasing costs for information systems development, enforcement activities, application processing and customer services over the last biennium. While it is true that raising fees will likely allow the Board to increase its revenues to meet anticipated budget deficits, licensees (and probably the public) would likely benefit more from efforts to decrease Board costs so that they more closely match current revenues.

Board staff reports, for instance, that software purchased to facilitate automation of the licensure process is a considerable and increasing expense. This new software is not a custom built product so it is anticipated that more money (beyond the initial purchase price) will have to be spent in order to allow the automation software to do what the Board needs it to do. The Board anticipates that implementation of this automated

system will increase system stability but will not increase far term efficiency so that fewer employees are needed (and so that long run costs for licensees decrease). Instead more employees will likely need to be hired once the automated system is in place. Although licensees may benefit somewhat from being able to submit applications and fees online, that benefit is likely outweighed by large near-term and far-term costs for this system.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that, as of June 30, 2009, the Board licenses 52 barber schools, 154 barber teachers, 969 barber shops, 3,316 barbers, 173 cosmetology schools, 1,896 cosmetology instructors, 5,683 cosmetology salons, 42,603 cosmetologists, 39 nail technician schools, 201 nail technician instructors, 804 nail salons and 8,790 nail technicians. All of these entities will be affected by fee increases. DPOR also reports that most of these entities would meet the definition of small businesses.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth will incur the cumulative costs of licensure fees that will increase on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are several actions that the Board could take that might mitigate or eliminate the necessity of raising fees. The Board could slightly lengthen the time that it takes to process both license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, for new applicants. Because DPOR reports that the new automated system that has been purchased is not anticipated to cut processing times or increase efficiency, and thus lower costs, in the long run; licensees would likely benefit if DPOR either reinstated their old system or found another automated system that could be expected to increase future efficiency and decrease the need for future staff increases.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the

Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with the approval. However, we do not agree with the statements made by DPB in the EIA regarding the new licensing system. As explained to DPB staff in a meeting, the new software package is being purchased to replace an unsustainable legacy system that is currently over two decades old, and operating on an unsupported operating platform created by the Digital Corporation and currently owned by Hewlett-Packard. Migration from the old system to the new system is necessitated by the need to sustain licensing operations.

The legacy system had twenty years of programming customizations built into the system, and those customizations resulted in significant automation of processes, constructing many business rules into system operations, and allowed for the development and institutionalizing of training and operating that system. The new, commercial off the shelf (COTS) solution does not include many of our automated processes, handles information differently, and has made all of the agency's staff novices at understanding and operating the system. As a result of these realities we don't expect to be operating with less staff or as efficiently in the next few years. The statement, "Instead more employees will likely need to be hired..." speaks to the operational necessity for the next few years as processes are customized, staff gains efficiency and other efforts like on line license applications are implemented to reduce staffing requirements and contribute to efficiencies. The closing sentence of this section offers the most conservative of positions where it characterizes the balancing of on line applications as being "likely outweighed." We are

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clearly more optimistic in hoping the continued unfolding of the new licensing system offers substantial improvements in service times, ease of access for citizens, and reduced staff time by making the licensing process paperless. Further, once the development and implementation of the new system is complete, DPOR will be provided the source code for the new system by the vendor and will be able to maintain, customize, and respond to the near certain changing requirements of our mission for decades to come.

Finally, DPOR was directed by VITA to purchase a COTS product to replace our legacy system. After going through the procurement process, the new product was selected based on the criteria established for the solicitation. In conclusion, DPOR cannot continue to rely on our existing, legacy system as it runs on an unsupported platform. Further, commencing another procurement to select and purchase another system would add additional expense and time to this effort with no assurance of a different outcome and would also likely involve time consuming and costly litigation in terminating the current contract.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Part III Fees

18VAC41-20-140. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$\$\$ <u>\$75</u>	With application
License by Endorsement	\$\$\$ <u>\$75</u>	With application
Renewal:		
Barber	\$\$\$ <u>\$75</u>	With renewal card prior to expiration date
Cosmetologist	\$\$\$ <u>\$75</u>	With renewal card prior to expiration date
Nail technician	\$\$\$ <u>\$75</u>	With renewal card prior to expiration date
Reinstatement	\$\$\$ <u>\$150*</u> <u>*includes \$75 renewal fee and \$75 reinstatement fee</u>	With reinstatement application
Instructors:		
Application	\$\$\$ <u>\$85</u>	With application
License by Endorsement	\$\$\$ <u>\$85</u>	With application
Renewal	\$\$\$ <u>\$85</u>	With renewal card prior to expiration date
Reinstatement	\$\$\$ <u>\$170*</u> <u>*includes \$85 renewal fee and \$85 reinstatement fee</u>	With reinstatement application
Facilities:		
Application	\$\$\$ <u>\$115</u>	With application
Renewal	\$\$\$ <u>\$115</u>	With renewal card prior to expiration date
Reinstatement	\$\$\$ <u>\$230*</u> <u>*includes \$115 renewal fee and \$115 reinstatement fee</u>	With reinstatement application

Schools:		
Application	\$120 \$145	With application
Add Program	\$60 \$85	With application
Renewal	\$120 \$145	With reinstatement application <u>renewal card prior to expiration date</u>
Reinstatement	\$120 \$290* *includes \$145 renewal fee and \$145 reinstatement fee	With renewal card prior to expiration date <u>reinstatement application</u>

FORMS (18VAC41-20)

Cosmetology and Nail Technician Examination Application, 12EX/EXAM APP (eff. 12/02).

~~Cosmetology and Nail Technician License Application, 12LIC/COSMO LIC APP (eff. 8/02).~~

Barber Examination Application, 13EX/BAR EXAM APP (eff. 12/02).

~~Barber License Application, 13LIC/BAR LIC APP (eff. 7/9/02).~~

~~Endorsement Application, 1213END/END APP (eff. 7/2/02).~~

~~Reinstatement Application, 1213REI/REINSTATE APP (eff. 7/2/02).~~

~~Salon or Shop License Application, 1213SLSH/SALON OR SHOP LIC APP (eff. 9/02).~~

~~Cosmetology School License Application, 12SCHL/COSMO SCHOOL LIC APP (eff. 9/02).~~

~~Barber School License Application, 13SCHL/BAR SCHL LIC APP (eff. 9/02).~~

[License by Endorsement Application, 1213END \(rev. 10/10\).](#)

[Reinstatement Application, 1213REI \(rev. 10/10\).](#)

[Salon, Shop, Spa & Parlor License Applications, 1213BUS \(rev. 10/10\).](#)

Cosmetology Training and Experience Verification Form, 12ETREXP/COSMO TRAIN & EXP FORM (eff. 9/02).

Cosmetology Temporary Permit Application, 12ETP/COSMO TEMP PERMIT APP (eff. 7/9/02).

~~Wax Technician License Application, 1214LIC/WAX TECH LIC APP (eff. 7/02).~~

[Instructor Certification Application, 1213INST \(rev. 10/10\).](#)

[School License Application, 1213SCHL \(rev. 10/10\).](#)

[Licensure Fee Notice, 1213FEE \(rev. 10/10\).](#)

VA.R. Doc. No. R09-1831; Filed October 20, 2010, 11:06 a.m.

Proposed Regulation

Title of Regulation: 18VAC41-30. Hair Braiding Regulations (amending 18VAC41-30-110).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

December 15, 2010 - 10 a.m. - Department of Professional Occupational Regulation, 9960 Mayland Drive, 2nd Floor - Training Room 1, Richmond, VA

Public Comment Deadline: January 7, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by §§ 54.1-113, 54.1-201, 54.1-304, and 54.1-308 of the Code of Virginia. To comply with these statutes, the Board for Barbers and Cosmetology evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113 requires that, following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation shows expenses allocated to it for the past biennium to be more than 10% greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201 describes each regulatory board's power and duty to levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the department.

Section 54.1-304 describes the power and duty of the department director to collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board of Professional and Occupational Regulation, the regulatory boards, and the department shall be paid.

Section 54.1-308 provides for compensation of the department director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board

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showing moneys collected on its behalf and expenses allocated to the board.

Purpose: The intent of the proposed amendment is to increase licensing fees for regulants of the Board for Barbers and Cosmetology. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department of Professional and Occupational Regulation's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a hair braider, hair braiding salon, or hair braiding school license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This delay could provide an opportunity for a dishonest hair braider, hair braiding salon, or hair braiding school, waiting for action to be taken by the board, to continue to work and harm additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The Board for Barbers and Cosmetology has no other source of revenue from which to fund its operations.

Substance: The existing regulations are being amended to increase the fees applicable to several licensing items, as follows:

Hair braider license - from \$55 to \$75.

Hair braider license by endorsement - from \$55 to \$75.

Hair braider license renewal - from \$55 to \$75.

Hair braider license reinstatement - from \$55 to \$75.

Hair braiding salon license - from \$90 to \$115.

Hair braiding salon license renewal - from \$90 to \$115.

Hair braiding salon license reinstatement - from \$90 to \$115.

Hair braiding school license - from \$120 to \$145.

Hair braiding school to add a program - from \$60 to \$85.

Hair braiding school license renewal - from \$120 to \$145.

Hair braiding school license reinstatement - from \$120 to \$145.

Issues: The primary issue for the proposed fee increase is the Department of Professional and Occupational Regulation's statutory requirement to comply with § 54.1-113 of the Code of Virginia (the Callahan Act) which requires the department to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. For the 2008-2010 biennium, the Board for Barbers and Cosmetology is expected to have a \$86,784 cash balance and a Callahan Act percentage of 1.5 and for the 2010-2012 biennium, the board is expected to incur a deficit of \$821,453 and a Callahan Act percentage of -13.2.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to an amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective early in the 2010-2012 biennium. Otherwise, the board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Barbers and Cosmetologists (Board) proposes to raise fees for hair braiding schools, hair braiding salons and hair braiders. The Board also proposes to change the regulatory text so that it is clear that licensees who reinstate their licenses must pay a renewal fee as well as a reinstatement fee.

Result of Analysis. The benefits likely exceed the costs for one of these proposed changes. For all other changes, costs likely exceed benefits.

Estimated Economic Impact. Currently, hair braiders pay \$55 for initial licensure (either by application or endorsement), \$55 for biennial renewal and \$110 for reinstatement. The reinstatement fee is currently listed as \$55 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Hair braiding salons must have a current facilities license in order to be open in the Commonwealth. Currently, an initial facilities license is \$90, biennial renewal of that license is \$90 and reinstatement is \$180. The reinstatement fee is currently listed as \$90 but

licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Currently hair braiding schools must pay \$120 for an initial license, \$120 for biennial license renewal and \$240 for reinstatement. The reinstatement fee is currently listed as \$120 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license.

The Board now proposes to raise fees for these three categories of licensure. Under this proposal, current fees will increase between 28% and 36%. Below is a comparison table for current and proposed fees:

	FEE TYPE	CURRENT FEE	PROPOSED FEE
Hair Braiders	Initial Licensure by Application	\$55	\$75
	Initial Licensure by Endorsement	\$55	\$75
	Renewal	\$55	\$75
	Reinstatement	\$110	\$150
Hair Braiding Salons	Initial Application	\$90	\$115
	Renewal	\$90	\$115
	Reinstatement	\$180	\$230
Hair Braiding Schools	Initial Application	\$120	\$145
	Renewal	\$120	\$145
	Reinstatement	\$240	\$290

The Board reports that these fee increases are necessary in order to meet Callahan Act requirements for cash reserves. Specifically, the Board reports that it has incurred increasing costs for information systems development, enforcement activities, application processing and customer services over the last biennium. While it is true that raising fees will likely allow the Board to increase its revenues to meet anticipated budget deficits, licensees (and probably the public) would likely benefit more from efforts to decrease Board costs so that they more closely match current revenues.

Board staff reports, for instance, that software purchased to facilitate automation of the licensure process is a considerable and increasing expense. This new software is not a custom built product so it is anticipated that more money (beyond the initial purchase price) will have to be spent in order to allow the automation software to do what the Board needs it to do. The Board anticipates that implementation of this automated system will increase system stability but will not increase far term efficiency so that fewer employees are needed (and so that long run costs for licensees decrease). Instead more

employees will likely need to be hired once the automated system is in place. Although licensees may benefit somewhat from being able to submit applications and fees online, that benefit is likely outweighed by large near-term and far-term costs for this system.

In the three years since licensure was required for hair braiders, there have been only 16 complaints lodged against individuals that are meant to be licensed under these regulations. Given this, it is unlikely that fee increases are needed to cover enforcement activity for these licensees.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that, as of June 30, 2009, the Board licenses 4 hair braiding schools, 35 hair braiding salons and 434 hair braiders. All of these entities will be affected by fee increases. DPOR also reports that most of these entities would meet the definition of small businesses.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth will incur the cumulative costs of licensure fees that will increase on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are several actions that the Board could take that might mitigate or eliminate the necessity of raising fees. The Board could slightly lengthen the time that it takes to process both license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, for new applicants. Because DPOR reports that the new automated system that has been purchased is not anticipated to cut processing times or increase efficiency, and thus lower costs, in the long run; licensees would likely benefit if DPOR either reinstated their old system or found another automated system that could be expected to increase future efficiency and decrease the need for future staff increases.

The General Assembly could also likely lower costs for both small businesses for these professions, and for their customers, if it reconsidered whether the Commonwealth would be better served by legislative changes that would either make licensure voluntary or by completely eliminating the states role in certifying these professions.

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Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with the approval. However, we do not agree with the statements made by DPB in the EIA regarding the new licensing system. As explained to DPB staff in a meeting, the new software package is being purchased to replace an unsustainable legacy system that is currently over two decades old, and operating on an unsupported operating platform created by the Digital Corporation and currently owned by Hewlett-Packard. Migration from the old system to the new system is necessitated by the need to sustain licensing operations.

The legacy system had twenty years of programming customizations built into the system, and those customizations resulted in significant automation of processes, constructing many business rules into system operations, and allowed for the development and institutionalizing of training and operating that system. The new, commercial off the shelf (COTS) solution does not include many of our automated processes, handles information differently, and has made all of the agency's staff novices at understanding and operating the system. As a result of these realities we don't expect to be operating with less staff or as efficiently in the next few years. The statement, "Instead more employees will likely need to be hired..." speaks to the operational necessity for the next few

years as processes are customized, staff gains efficiency and other efforts like on line license applications are implemented to reduce staffing requirements and contribute to efficiencies. The closing sentence of this section offers the most conservative of positions where it characterizes the balancing of on line applications as being "likely outweighed." We are clearly more optimistic in hoping the continued unfolding of the new licensing system offers substantial improvements in service times, ease of access for citizens, and reduced staff time by making the licensing process paperless. Further, once the development and implementation of the new system is complete, DPOR will be provided the source code for the new system by the vendor and will be able to maintain, customize, and respond to the near certain changing requirements of our mission for decades to come.

In regard to the correlation of enforcement activity to fees for this particular occupation, it is not the intent to establish fees that cover the cost of any specific process at the occupation level. Fees for each board are established at amounts that will provide total revenues sufficient but not excessive to meet all operating and allocated expenses of the board (see § 54.1-113 and § 54.1-308 of the Code of Virginia).

Concerning legislative changes, we agree that amendments to the Code of Virginia could be enacted by the General Assembly. However, to fulfill its responsibilities, the board must comply with the statutes currently in place.

Finally, DPOR was directed by VITA to purchase a COTS product to replace our legacy system. After going through the procurement process, the new product was selected based on the criteria established for the solicitation. In conclusion, DPOR cannot continue to rely on our existing, legacy system as it runs on an unsupported platform. Further, commencing another procurement to select and purchase another system would add additional expense and time to this effort with no assurance of a different outcome (and would also likely involve time consuming and costly litigation in terminating the current contract).

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the

Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Part III
Fees

18VAC41-30-110. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$\$ <u>\$75</u>	With application
License by Endorsement	\$\$ <u>\$75</u>	With application
Renewal	\$\$ <u>\$75</u>	With renewal card prior to expiration date
Reinstatement	\$\$ <u>\$150*</u> <i>*includes \$75 renewal fee and \$75 reinstatement fee</i>	With reinstatement application
Salons:		
Application	\$90 <u>\$115</u>	With application
Renewal	\$90 <u>\$115</u>	With renewal card prior to expiration date
Reinstatement	\$90 <u>\$230*</u> <i>*includes \$115 renewal fee and \$115 reinstatement fee</i>	With reinstatement application
Schools:		
Application	\$120 <u>\$145</u>	With application

Renewal	\$120 <u>\$145</u>	With renewal card prior to expiration date
Reinstatement	\$120 <u>\$290*</u> <i>*includes \$145 renewal fee and \$145 reinstatement fee</i>	With reinstatement application

FORMS (18VAC41-30)

Hair Braiding Examination and License Application, 1222_26EX (eff. (08/04).

Training and Experience Verification Form, 1213ETREXP (eff. 08/04).

Temporary Permit Application, 1213TP (eff. 07/04).

~~License by Endorsement Application, 1213END (eff. 07/04).~~

~~Salon, Shop and Parlor License Application, 1213SLSH (eff. 07/04).~~

[License by Endorsement Application, 1213END \(rev. 10/10\).](#)

[Salon, Shop, Spa & Parlor License Application, 1213BUS \(rev. 10/10\).](#)

[Reinstatement Application, 1213REI \(rev. 10/10\).](#)

[School License Application, 1213SCHL \(rev 10/10\).](#)

[Licensure Fee Notice, 1213FEE \(rev.10/10\).](#)

VA.R. Doc. No. R09-1833; Filed October 20, 2010, 11:07 a.m.

Proposed Regulation

Title of Regulation: 18VAC41-40. Wax Technician Regulations (amending 18VAC41-40-120).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

December 15, 2010 - 10 a.m. - Department of Professional Occupational Regulation, 9960 Mayland Drive, 2nd Floor - Training Room 1, Richmond, VA

Public Comment Deadline: January 7, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by §§ 54.1-113, 54.1-201, 54.1-304, and 54.1-308 of the Code of Virginia. To comply with these statutes, the Board for Barbers and Cosmetology evaluates its current and projected

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financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113 requires that, following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation shows expenses allocated to it for the past biennium to be more than 10% greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201 describes each regulatory board's power and duty to levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the department.

Section 54.1-304 describes the power and duty of the department director to collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board of Professional and Occupational Regulation, the regulatory boards, and the department shall be paid.

Section 54.1-308 provides for compensation of the department director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

Purpose: The intent of the proposed amendment is to increase licensing fees for regulants of the Board for Barbers and Cosmetology. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department of Professional and Occupational Regulation's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a wax technician, waxing salon, or waxing school license, or wax technician instructor certification, or temporary permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This delay could provide an opportunity for a dishonest wax technician, waxing salon, or waxing school license, or wax technician instructor certification, or temporary permit waiting for action to be taken by the board, to continue to work and harm additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The Board for Barbers and Cosmetology has no other source of revenue from which to fund its operations.

Substance: The existing regulations are being amended to increase or establish the fees applicable to several licensing items, as follows:

Wax technician license - increased from \$55 to \$75.

Wax technician license by endorsement - increased from \$55 to \$75.

Wax technician license renewal - increased from \$55 to \$75.

Wax technician license reinstatement - increased from \$55 to \$75.

Wax technician instructor certification - established at \$85.

Wax technician instructor certification by endorsement - established at \$85.

Wax technician instructor certification renewal - established at \$85.

Wax technician instructor certification reinstatement - established at \$85.

Waxing salon license - increased from \$90 to \$115.

Waxing salon license renewal - increased from \$90 to \$115.

Waxing salon license reinstatement - increased from \$90 to \$115.

Waxing school license - increased from \$120 to \$145.

Waxing school to add a program - increased from \$60 to \$85.

Waxing school license renewal - increased from \$120 to \$145.

Waxing school license reinstatement - increased from \$120 to \$145.

Issues: The primary issue for the proposed fee increase is the Department of Professional and Occupational Regulation's statutory requirement to comply with § 54.1-113 of the Code of Virginia (the Callahan Act) which requires the department to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. For the 2008-2010 biennium, the Board for Barbers and Cosmetology is expected to have a \$86,784 cash balance and a Callahan Act

percentage of 1.5 and for the 2010-2012 biennium, the board is expected to incur a deficit of \$821,453 and a Callahan Act percentage of -13.2.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to an amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective early in the 2010-2012 biennium. Otherwise, the board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Barbers and Cosmetologists (Board) proposes to raise fees for wax technicians, waxing salons and waxing schools and institute fees for waxing instructors. The Board also proposes to change the regulatory text so that it is clear that licensees who reinstate their licenses must pay a renewal fee as well as a reinstatement fee.

Result of Analysis. The benefits likely exceed the costs for one of these proposed changes. For all other changes, costs likely exceed benefits.

Estimated Economic Impact. Currently, wax technicians pay \$55 for initial licensure (either by application or endorsement), \$55 for biennial renewal and \$110 for reinstatement. The reinstatement fee is currently listed as \$55 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Waxing salons must have a current facilities license in order to be open in the Commonwealth. Currently, an initial facilities license is \$90, biennial renewal of that license is \$90 and reinstatement is \$180. The reinstatement fee is currently listed as \$90 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Currently waxing schools must pay \$120 for an initial license, \$120 for biennial license renewal and \$240 for reinstatement. The reinstatement fee is currently listed as \$120 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license.

The Board now proposes to raise fees for these three categories of licensure and institute fees for wax technician instructors (the Board reports these fees were left out of initial

regulations that were promulgated in 2004). Under this proposal, current fees will increase between 28% and 36%. Below is a comparison table for current and proposed fees:

	FEE TYPE	CURRENT FEE	PROPOSED FEE
Wax Technicians	Initial Licensure by Application	\$55	\$75
	Initial Licensure by Endorsement	\$55	\$75
	Renewal	\$55	\$75
	Reinstatement	\$110	\$150
Wax Technician Instructor	Initial Licensure by Application	N/A	\$85
	Initial Licensure by Endorsement	N/A	\$85
	Renewal	N/A	\$85
	Reinstatement	N/A	\$170
Waxing Salons	Initial Application	\$90	\$115
	Renewal	\$90	\$115
	Reinstatement	\$180	\$230
Waxing Schools	Initial Application	\$120	\$145
	Renewal	\$120	\$145
	Reinstatement	\$240	\$290

The Board reports that these fee increases are necessary in order to meet Callahan Act requirements for cash reserves. Specifically, the Board reports that it has incurred increasing costs for information systems development, enforcement activities, application processing and customer services over the last biennium. While it is true that raising fees will likely allow the Board to increase its revenues to meet anticipated budget deficits, licensees (and probably the public) would likely benefit more from efforts to decrease Board costs so that they more closely match current revenues.

Board staff reports, for instance, that software purchased to facilitate automation of the licensure process is a considerable and increasing expense. This new software is not a custom built product so it is anticipated that more money (beyond the initial purchase price) will have to be spent in order to allow the automation software to do what the Board needs it to do. The Board anticipates that implementation of this automated system will increase system stability but will not increase far term efficiency so that fewer employees are needed (and so that long run costs for licensees decrease). Instead more employees will likely need to be hired once the automated system is in place. Although licensees may benefit somewhat

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from being able to submit applications and fees online, that benefit is likely outweighed by large near-term and far-term costs for this system.

In the past five years, there have been only 16 complaints lodged against individuals that are meant to be licensed under these regulations. Given this, it is unlikely that fee increases are needed to cover enforcement activity for these licensees.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that, as of June 30, 2009, the Board licenses 11 waxing schools, 65 waxing salons and 34 wax technician instructors and 8,790 wax technicians. All of these entities will be affected by fee increases. DPOR also reports that most of these entities would meet the definition of small businesses.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth will incur the cumulative costs of licensure fees that will increase on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are several actions that the Board could take that might mitigate or eliminate the necessity of raising fees. The Board could slightly lengthen the time that it takes to process both license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, for new applicants. Because DPOR reports that the new automated system that has been purchased is not anticipated to cut processing times or increase efficiency, and thus lower costs, in the long run; licensees would likely benefit if DPOR either reinstated their old system or found another automated system that could be expected to increase future efficiency and decrease the need for future staff increases.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation

would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with the approval. However, we do not agree with the statements made by DPB in the EIA regarding the new licensing system. As explained to DPB staff in a meeting, the new software package is being purchased to replace an unsustainable legacy system that is currently over two decades old, and operating on an unsupported operating platform created by the Digital Corporation and currently owned by Hewlett-Packard. Migration from the old system to the new system is necessitated by the need to sustain licensing operations.

The legacy system had twenty years of programming customizations built into the system, and those customizations resulted in significant automation of processes, constructing many business rules into system operations, and allowed for the development and institutionalizing of training and operating that system. The new, commercial off the shelf (COTS) solution does not include many of our automated processes, handles information differently, and has made all of the agency's staff novices at understanding and operating the system. As a result of these realities we don't expect to be operating with less staff or as efficiently in the next few years. The statement, "Instead more employees will likely need to be hired..." speaks to the operational necessity for the next few years as processes are customized, staff gains efficiency and other efforts like on line license applications are implemented to reduce staffing requirements and contribute to efficiencies. The closing sentence of this section offers the most conservative of positions where it characterizes the balancing of on line applications as being "likely outweighed." We are clearly more optimistic in hoping the continued unfolding of the new licensing system offers substantial improvements in service times, ease of access for citizens, and reduced staff time by making the licensing process paperless. Further, once

the development and implementation of the new system is complete, DPOR will be provided the source code for the new system by the vendor and will be able to maintain, customize, and respond to the near certain changing requirements of our mission for decades to come.

In regard to the correlation of enforcement activity to fees for this particular occupation, it is not the intent to establish fees that cover the cost of any specific process at the occupation level. Fees for each board are established at amounts that will provide total revenues sufficient but not excessive to meet all operating and allocated expenses of the board (see § 54.1-113 and § 54.1-308 of the Code of Virginia).

Finally, DPOR was directed by VITA to purchase a COTS product to replace our legacy system. After going through the procurement process, the new product was selected based on the criteria established for the solicitation. In conclusion, DPOR cannot continue to rely on our existing, legacy system as it runs on an unsupported platform. Further, commencing another procurement to select and purchase another system would add additional expense and time to this effort with no assurance of a different outcome and would also likely involve time consuming and costly litigation in terminating the current contract.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Part III
Fees

18VAC41-40-120. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$55 <u>\$75</u>	With application
License by Endorsement	\$55 <u>\$75</u>	With application
Renewal	\$55 <u>\$75</u>	With renewal card prior to expiration date
Reinstatement	\$55 <u>\$150*</u> <i>*includes \$75 renewal fee and \$75 reinstatement fee</i>	With reinstatement application
Instructors:		
Application	<u>\$85</u>	<u>With application</u>
License by Endorsement	<u>\$85</u>	<u>With application</u>
Renewal	<u>\$85</u>	<u>With renewal card prior to expiration date</u>
Reinstatement	<u>\$170*</u> <i>*includes \$85 renewal fee and \$85 reinstatement fee</i>	<u>With reinstatement application</u>
Facilities:		
Application	\$90 <u>\$115</u>	With application
Renewal	\$90 <u>\$115</u>	With renewal card prior to expiration date
Reinstatement	\$90 <u>\$230*</u> <i>*includes \$115 renewal fee and \$115 reinstatement fee</i>	With reinstatement application
Schools:		
Application	\$120 <u>\$145</u>	With application
Renewal	\$120 <u>\$145</u>	With renewal card prior to expiration date
Reinstatement	\$120 <u>\$290*</u> <i>*includes \$145 renewal fee and</i>	With reinstatement application

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	<u>\$145 reinstatement fee</u>	
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FORMS (18VAC41-40)

Cosmetology, Nail Technician & Wax Technician Examination Application, 12EX (eff. 7/03).

Training and Experience Verification Form, 12TRESP (eff. 7/03).

Cosmetology Temporary Permit Application, 12TP (eff. 7/03).

~~Cosmetology, Nail Technician & Wax Technician License Application, 12LIC (eff. 7/03).~~

~~Endorsement Application, 1213END (eff. 7/03).~~

~~Salon & Shop License Application, 1213SLSH (eff. 7/03).~~

~~School License Application, 12SCHL (eff. 7/03).~~

[License by Endorsement Application, 1213END \(rev.10/10\).](#)

[Salon, Shop, Spa & Parlor License Applications, 1213BUS \(rev.10/10\).](#)

[School License Application, 1213SCHL \(rev.10/10\).](#)

[Instructor Certification Application, 1213INST \(rev. 10/10\).](#)

[Reinstatement Application, 1213REI, \(rev.10/10\).](#)

[Licensure Fee Notice, 1213FEE, \(rev.10/10\).](#)

VA.R. Doc. No. R09-1834; Filed October 20, 2010, 11:06 a.m.

Proposed Regulation

Title of Regulation: 18VAC41-50. Tattooing Regulations (amending 18VAC41-50-130).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

December 15, 2010 - 10 a.m. - Department of Professional Occupational Regulation, 9960 Mayland Drive, 2nd Floor - Training Room 1, Richmond, VA

Public Comment Deadline: January 7, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by §§ 54.1-113, 54.1-201, 54.1-304, and 54.1-308 of the Code of Virginia. To comply with these statutes, the Board for Barbers and Cosmetology evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113 requires that, following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation shows expenses allocated to it for the past biennium to be more than 10% greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201 describes each regulatory board's power and duty to levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the department.

Section 54.1-304 describes the power and duty of the department director to collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board of Professional and Occupational Regulation, the regulatory boards, and the department shall be paid.

Section 54.1-308 provides for compensation of the department director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

Purpose: The intent of the proposed amendment is to increase licensing fees for regulants of the Board for Barbers and Cosmetology. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department of Professional and Occupational Regulation's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a tattooer, limited term tattooer, permanent cosmetic tattooer, master permanent cosmetic tattooer, tattoo parlor, limited term tattoo parlor, permanent cosmetic tattoo salon, tattooing school license, or permanent cosmetic tattooing school license, or permanent cosmetic tattooing instructor or permanent cosmetic tattooing instructor certificate. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This delay could provide an opportunity for a dishonest tattooer, apprentice tattooer, limited term tattooer, permanent cosmetic tattooer, master permanent cosmetic tattooer, tattoo parlor, limited term tattoo parlor, permanent cosmetic tattoo salon, tattooing school license, or permanent cosmetic tattooing school license, or tattooing instructor or

permanent cosmetic tattooing instructor certificate waiting for action to be taken by the board, to continue to work and harm additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The Board for Barbers and Cosmetology has no other source of revenue from which to fund its operations.

Substance: The existing regulations are being amended to increase the fees applicable to several licensing items, as follows:

Tattooer license - from \$55 to \$75.

Limited term tattooer license - from \$55 to \$75.

Permanent cosmetic tattooer license - from \$55 to \$75.

Master permanent cosmetic tattooer license - from \$55 to \$75.

Tattooer license by endorsement - from \$55 to \$75.

Permanent cosmetic tattooer license by endorsement - from \$55 to \$75.

Master permanent cosmetic tattooer license by endorsement - from \$55 to \$75.

Tattooer license renewal - from \$55 to \$75.

Permanent cosmetic tattooer license renewal - from \$55 to \$75.

Master permanent cosmetic tattooer license renewal - from \$55 to \$75.

Tattooer license reinstatement - from \$55 to \$75.

Permanent cosmetic tattooer license reinstatement - from \$55 to \$75.

Master permanent cosmetic tattooer license reinstatement - from \$55 to \$75.

Tattooing instructor certification - from \$60 to \$85.

Permanent cosmetic tattooing instructor certification - from \$60 to \$85.

Tattooing instructor certification renewal - from \$60 to \$85.

Permanent cosmetic tattooing instructor certification renewal - from \$60 to \$85.

Tattooing instructor certification reinstatement - from \$60 to \$85.

Permanent cosmetic tattooing instructor certification reinstatement - from \$60 to \$85.

Tattoo parlor license - from \$90 to \$115.

Limited term tattoo parlor license - from \$90 to \$115.

Permanent cosmetic tattoo salon license - from \$90 to \$115.

Tattoo parlor license renewal - from \$90 to \$115.

Permanent cosmetic tattoo salon license renewal - from \$90 to \$115.

Tattoo parlor license reinstatement - from \$90 to \$115.

Permanent cosmetic tattoo salon license reinstatement - from \$90 to \$115.

Tattooing school license - from \$120 to \$145.

Permanent cosmetic tattooing school license - from \$120 to \$145.

Tattooing school license renewal - from \$120 to \$145.

Permanent cosmetic tattooing school license renewal - from \$120 to \$145.

Tattooing school license reinstatement - from \$120 to \$145.

Permanent cosmetic tattooing school license reinstatement - from \$120 to \$145.

Issues: The primary issue for the proposed fee increase is the Department of Professional and Occupational Regulation's statutory requirement to comply with § 54.1-113 of the Code of Virginia (the Callahan Act) which requires the department to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. For the 2008-2010 biennium, the Board for Barbers and Cosmetology is expected to have a \$86,784 cash balance and a Callahan Act percentage of 1.5 and for the 2010-2012 biennium, the board is expected to incur a deficit of \$821,453 and a Callahan Act percentage of -13.2.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to an amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective early in the 2010-2012 biennium. Otherwise, the board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however,

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the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Barbers and Cosmetologists (Board) proposes to raise fees for tattooers, limited term tattooers, permanent cosmetic tattooers, master permanent cosmetic tattooers, tattoo parlors, limited term tattoo parlors, permanent cosmetic tattoo salons, tattooing instructors, permanent cosmetic tattooing instructors, tattooing schools and permanent cosmetic tattoo schools. The Board also proposes to change the regulatory text so that it is clear that licensees who reinstate their licenses must pay a renewal fee as well as a reinstatement fee.

Result of Analysis. The benefits likely exceed the costs for one of these proposed changes. For all other changes, costs likely exceed benefits.

Estimated Economic Impact. Currently, tattooers, limited term tattooers, permanent cosmetic tattooers and master permanent cosmetic tattooers pay \$55 for initial licensure (either by application or endorsement). Tattooers, permanent cosmetic tattooers and master permanent cosmetic tattooers pay \$55 for biennial renewal and \$110 for reinstatement. The reinstatement fee is currently listed as \$55 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Tattooing instructors and permanent cosmetic tattooing instructors pay \$60 for initial licensure (either by application or endorsement), \$60 for biennial renewal and \$120 for reinstatement. The reinstatement fee is currently listed as \$60 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Tattoo parlors, limited term tattoo parlors and permanent cosmetic tattoo salons must have a current facilities license in order to be open in the Commonwealth. Currently, an initial facilities license is \$90. For tattoo parlors and permanent cosmetic tattoo salons, biennial renewal of that license is \$90 and reinstatement is \$180. The reinstatement fee is currently listed as \$90 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Currently, tattooing schools and permanent cosmetic tattoo schools must pay \$120 for an initial license, \$120 for biennial license renewal and \$240 for reinstatement. The reinstatement fee is currently listed as \$120 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license.

The Board now proposes to raise fees for all categories of licensure. Under this proposal, current fees will increase between 28% and 42%. Below is a comparison table for current and proposed fees:

	FEE TYPE	CURRENT FEE	PROPOSED FEE
Tattooers Limited Term Tattooers (initial only) Permanent Cosmetic Tattooers Master Permanent Cosmetic Tattooers	Initial Licensure by Application	\$55	\$75
	Initial Licensure by Endorsement	\$55	\$75
	Renewal	\$55	\$75
	Reinstatement	\$110	\$150
Tattooing Instructors Permanent Cosmetic Tattooing Instructors	Initial Licensure by Application	\$60	\$85
	Initial Licensure by Endorsement	\$60	\$85
	Renewal	\$60	\$85
	Reinstatement	\$120	\$170
Tattoo Parlors Limited Term Tattoo Parlors (initial only) Permanent Cosmetic Tattoo Salons	Initial Application	\$90	\$115
	Renewal	\$90	\$115
	Reinstatement	\$180	\$230
Tattooing Schools Permanent Cosmetic Tattoo Schools	Initial Application	\$120	\$145
	Renewal	\$120	\$145
	Reinstatement	\$240	\$290

The Board reports that these fee increases are necessary in order to meet Callahan Act requirements for cash reserves. Specifically, the Board reports that it has incurred increasing costs for information systems development, enforcement activities, application processing and customer services over the last biennium. While it is true that raising fees will likely allow the Board to increase its revenues to meet anticipated budget deficits, licensees (and probably the public) would likely benefit more from efforts to decrease Board costs so that they more closely match current revenues.

Board staff reports, for instance, that software purchased to facilitate automation of the licensure process is a considerable and increasing expense. This new software is not a custom built product so it is anticipated that more money (beyond the initial purchase price) will have to be spent in order to allow the automation software to do what the Board needs it to do. The Board anticipates that implementation of this automated system will increase system stability but will not increase far term efficiency so that fewer employees are needed (and so that long run costs for licensees decrease). Instead more employees will likely need to be hired once the automated system is in place. Although licensees may benefit somewhat from being able to submit applications and fees online, that benefit is likely outweighed by large near-term and far-term costs for this system.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that, as of June 30, 2009, the Board licenses 584 tattooers, 293 permanent cosmetic tattooers, 223 tattoo parlors, 36 permanent cosmetic tattoo salons, 17 tattooing instructors, 14 permanent cosmetic tattooing instructors, 6 tattooing schools and 7 permanent cosmetic tattoo schools. All of these entities will be affected by fee increases. DPOR also reports that most of these entities would meet the definition of small businesses.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth will incur the cumulative costs of licensure fees that will increase on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are several actions that the Board could take that might mitigate or eliminate the necessity of raising fees. The Board could slightly lengthen the time that it takes to process both license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, for new applicants. Because DPOR reports that the new automated system that has been purchased is not anticipated to cut processing times or increase efficiency, and thus lower costs, in the long run; licensees would likely benefit if DPOR either reinstated their old system or found another automated system that could be expected to increase future efficiency and decrease the need for future staff increases.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with the approval. However, we do not agree with the statements made by DPB in the EIA regarding the new licensing system. As explained to DPB staff in a meeting, the new software package is being purchased to replace an unsustainable legacy system that is currently over two decades old, and operating on an unsupported operating platform created by the Digital Corporation and currently owned by Hewlett-Packard. Migration from the old system to the new system is necessitated by the need to sustain licensing operations.

The legacy system had twenty years of programming customizations built into the system, and those customizations resulted in significant automation of processes, constructing many business rules into system operations, and allowed for the development and institutionalizing of training and operating that system. The new, commercial off the shelf (COTS) solution does not include many of our automated processes, handles information differently, and has made all of the agency's staff novices at understanding and operating the system. As a result of these realities we don't expect to be operating with less staff or as efficiently in the next few years. The statement, "Instead more employees will likely need to be hired..." speaks to the operational necessity for the next few

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years as processes are customized, staff gains efficiency and other efforts like on line license applications are implemented to reduce staffing requirements and contribute to efficiencies. The closing sentence of this section offers the most conservative of positions where it characterizes the balancing of on line applications as being "likely outweighed." We are clearly more optimistic in hoping the continued unfolding of the new licensing system offers substantial improvements in service times, ease of access for citizens, and reduced staff time by making the licensing process paperless. Further, once the development and implementation of the new system is complete, DPOR will be provided the source code for the new system by the vendor and will be able to maintain, customize, and respond to the near certain changing requirements of our mission for decades to come.

Finally, DPOR was directed by VITA to purchase a COTS product to replace our legacy system. After going through the procurement process, the new product was selected based on the criteria established for the solicitation. In conclusion, DPOR cannot continue to rely on our existing, legacy system as it runs on an unsupported platform. Further, commencing another procurement to select and purchase another system would add additional expense and time to this effort with no assurance of a different outcome and would also likely involve time consuming and costly litigation in terminating the current contract.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The

department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Part III Fees

18VAC41-50-130. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$\$\$ <u>\$75</u>	With application
License by Endorsement	\$\$\$ <u>\$75</u>	With application
Renewal	\$\$\$ <u>\$75</u>	With renewal card prior to expiration date
Reinstatement	\$110* <u>\$150*</u> *includes \$\$\$ <u>\$75</u> renewal fee and \$\$\$ <u>\$75</u> reinstatement fee	With reinstatement application
Instructors:		
Application	\$60 <u>\$85</u>	With application
License by Endorsement	\$60 <u>\$85</u>	With application
Renewal	\$60 <u>\$85</u>	With renewal card prior to expiration date
Reinstatement	\$120* <u>\$170*</u> *includes \$60 <u>\$85</u> renewal fee and \$60 <u>\$85</u> reinstatement fee	With reinstatement application
Parlors or salons:		
Application	\$90 <u>\$115</u>	With application
Renewal	\$90 <u>\$115</u>	With renewal card prior to expiration date
Reinstatement	\$180* <u>\$230*</u> *includes \$90 <u>\$115</u> renewal fee and \$90 <u>\$115</u> reinstatement fee	With reinstatement application

Schools:		
Application	\$ 120 \$145	With application
Renewal	\$120 \$145	With renewal card prior to expiration date
Reinstatement	\$240* \$290* *includes \$120 \$145 renewal fee and \$120 \$145 reinstatement fee	With reinstatement application

FORMS (18VAC41-50)

~~Salon, Shop and Parlor License Application, 12SLSHP (10/06).~~

[Salon, Shop, Spa & Parlor License Applications, 1213BUS \(rev.10/10\).](#)

Tattooer License Application, 1231_50LIC (10/06).

Tattooer Apprentice Certification Application, 1234TAC (10/06).

~~School License Application, 12SCHL (10/06).~~

~~Limited Term Tattooer License Application, 1233LIC (10/06).~~

~~Limited Term Tattoo Parlor License Application, 1235LTP (10/06).~~

[School License Application, 12SCHL \(10/10\).](#)

[Limited Term Tattooer License Application, 1233LIC \(rev.10/10\).](#)

[Limited Term Tattoo Parlor License Application, 1235LTPAR \(rev. 10/10\).](#)

Permanent Cosmetic Tattooer License Application, 1236_37LIC (10/06).

Permanent Cosmetic Tattooer Examination and License Application, 1236EX (10/06).

Master Permanent Cosmetic Tattooer Examination and License Application, 1237EX (10/06).

[License by Endorsement Application, 1213END \(rev. 10/10\).](#)

[Reinstatement Application, 1213REI \(rev. 10/10\).](#)

[Instructor Certification Application, 1213INST \(rev.10/10\).](#)

[Licensure Fee Notice, 1213FEE \(rev. 10/10\).](#)

VA.R. Doc. No. R09-1835; Filed October 20, 2010, 11:08 a.m.

Proposed Regulation

Title of Regulation: 18VAC41-60. **Body-Piercing Regulations (amending 18VAC41-60-90).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

December 15, 2010 - 10 a.m. - Department of Professional Occupational Regulation, 9960 Mayland Drive, 2nd Floor - Training Room 1, Richmond, VA

Public Comment Deadline: January 7, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by §§ 54.1-113, 54.1-201, 54.1-304, and 54.1-308 of the Code of Virginia. To comply with these statutes, the Board for Barbers and Cosmetology evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113 requires that, following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation shows expenses allocated to it for the past biennium to be more than 10% greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201 describes each regulatory board's power and duty to levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the department.

Section 54.1-304 describes the power and duty of the department director to collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board of Professional and Occupational Regulation, the regulatory boards, and the department shall be paid.

Section 54.1-308 provides for compensation of the department director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board showing moneys collected on its behalf and expenses allocated to the board.

Purpose: The intent of the proposed amendment is to increase licensing fees for regulants of the Board for Barbers and Cosmetology. The board must establish fees adequate to

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support the costs of board operations and a proportionate share of the Department of Professional and Occupational Regulation's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a body piercer, body piercer ear only, body piercing salon, or body piercing ear only salon license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This delay could provide an opportunity for a dishonest body piercer, body piercer ear only, body piercing salon, or body piercing ear only salon waiting for action to be taken by the board, to continue to work and harm additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The Board for Barbers and Cosmetology has no other source of revenue from which to fund its operations.

Substance: The existing regulations are being amended to increase the fees applicable to several licensing items, as follows:

- Body piercer license - from \$55 to \$75.
- Body piercer ear only license - from \$55 to \$75.
- Body piercer license by endorsement - from \$55 to \$75.
- Body piercer ear only license by endorsement - from \$55 to \$75.
- Body piercer license renewal - from \$55 to \$75.
- Body piercer ear only license renewal - from \$55 to \$75.
- Body piercer license reinstatement - from \$55 to \$75.
- Body piercer ear only license reinstatement - from \$55 to \$75.
- Body piercing salon license - from \$90 to \$115.
- Body piercing ear only salon license - from \$90 to \$115.
- Body piercing salon license renewal - from \$90 to \$115.

Body piercing ear only salon license renewal - from \$90 to \$115.

Body piercing salon license reinstatement - from \$90 to \$115.

Body piercing ear only salon license reinstatement - from \$90 to \$115.

Issues: The primary issue for the proposed fee increase is the Department of Professional and Occupational Regulation's statutory requirement to comply with § 54.1-113 of the Code of Virginia (the Callahan Act) which requires the department to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. For the 2008-2010 biennium, the Board for Barbers and Cosmetology is expected to have a \$86,784 cash balance and a Callahan Act percentage of 1.5 and for the 2010-2012 biennium, the board is expected to incur a deficit of \$821,453 and a Callahan Act percentage of -13.2.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to an amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective early in the 2010-2012 biennium. Otherwise, the board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated population should not be of a great significance compared to their level of income.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Barbers and Cosmetologists (Board) proposes to raise fees for body piercers, ear piercers, body piercing salons and ear piercing salons. The Board also proposes to change the regulatory text so that it is clear that licensees who reinstate their licenses must pay a renewal fee as well as a reinstatement fee.

Result of Analysis. The benefits likely exceed the costs for one of these proposed changes. For all other changes, costs likely exceed benefits.

Estimated Economic Impact. Currently, body piercers and ear piercers pay \$55 for initial licensure (either by application or endorsement), \$55 for biennial renewal and \$110 for reinstatement. The reinstatement fee is currently listed as \$55 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Body piercing salons

and ear piercing salons must have a current facilities license in order to be open in the Commonwealth. Currently, an initial facilities license is \$90. For body piercing salons and ear piercing salons, biennial renewal of that license is \$90 and reinstatement is \$180. The reinstatement fee is currently listed as \$90 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license.

The Board now proposes to raise fees for all categories of licensure. Under this proposal, current fees will increase between 28% and 36%. Below is a comparison table for current and proposed fees:

	FEE TYPE	CURRENT FEE	PROPOSED FEE
Body Piercers Ear Piercers	Initial Licensure by Application	\$55	\$75
	Initial Licensure by Endorsement	\$55	\$75
	Renewal	\$55	\$75
	Reinstatement	\$110	\$150
Body Piercing Salon	Initial Application	\$90	\$115
	Renewal	\$90	\$115
Ear Piercing Parlors	Reinstatement	\$180	\$230

The Board reports that these fee increases are necessary in order to meet Callahan Act requirements for cash reserves. Specifically, the Board reports that it has incurred increasing costs for information systems development, enforcement activities, application processing and customer services over the last biennium. While it is true that raising fees will likely allow the Board to increase its revenues to meet anticipated budget deficits, licensees (and probably the public) would likely benefit more from efforts to decrease Board costs so that they more closely match current revenues.

Board staff reports, for instance, that software purchased to facilitate automation of the licensure process is a considerable and increasing expense. This new software is not a custom built product so it is anticipated that more money (beyond the initial purchase price) will have to be spent in order to allow the automation software to do what the Board needs it to do. The Board anticipates that implementation of this automated system will increase system stability but will not increase far term efficiency so that fewer employees are needed (and so that long run costs for licensees decrease). Instead more employees will likely need to be hired once the automated system is in place. Although licensees may benefit somewhat from being able to submit applications and fees online, that benefit is likely outweighed by large near-term and far-term costs for this system.

In the two years since licensure was required for body piercers, there have been only 13 complaints lodged against individuals that are meant to be licensed under these regulations. Given this, it is unlikely that fee increases are needed to cover enforcement activity for these licensees.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that, as of June 30, 2009, the Board licenses 149 body piercers, 343 ear piercers, 86 body piecing parlors and 74 ear piercing parlors. All of these entities will be affected by fee increases. DPOR also reports that most of these entities would meet the definition of small businesses.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth will incur the cumulative costs of licensure fees that will increase on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are several actions that the Board could take that might mitigate or eliminate the necessity of raising fees. The Board could slightly lengthen the time that it takes to process both license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, for new applicants. Because DPOR reports that the new automated system that has been purchased is not anticipated to cut processing times or increase efficiency, and thus lower costs, in the long run; licensees would likely benefit if DPOR either reinstated their old system or found another automated system that could be expected to increase future efficiency and decrease the need for future staff increases.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected

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number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with the approval. However, we do not agree with the statements made by DPB in the EIA regarding the new licensing system. As explained to DPB staff in a meeting, the new software package is being purchased to replace an unsustainable legacy system that is currently over two decades old, and operating on an unsupported operating platform created by the Digital Corporation and currently owned by Hewlett-Packard. Migration from the old system to the new system is necessitated by the need to sustain licensing operations.

The legacy system had twenty years of programming customizations built into the system, and those customizations resulted in significant automation of processes, constructing many business rules into system operations, and allowed for the development and institutionalizing of training and operating that system. The new, commercial off the shelf (COTS) solution does not include many of our automated processes, handles information differently, and has made all of the agency's staff novices at understanding and operating the system. As a result of these realities we don't expect to be operating with less staff or as efficiently in the next few years. The statement, "Instead more employees will likely need to be hired..." speaks to the operational necessity for the next few years as processes are customized, staff gains efficiency and other efforts like on line license applications are implemented to reduce staffing requirements and contribute to efficiencies. The closing sentence of this section offers the most conservative of positions where it characterizes the balancing of on line applications as being "likely outweighed." We are clearly more optimistic in hoping the continued unfolding of the new licensing system offers substantial improvements in service times, ease of access for citizens, and reduced staff time by making the licensing process paperless. Further, once the development and implementation of the new system is complete, DPOR will be provided the source code for the new

system by the vendor and will be able to maintain, customize, and respond to the near certain changing requirements of our mission for decades to come.

In regard to the correlation of enforcement activity to fees for this particular occupation, it is not the intent to establish fees that cover the cost of any specific process at the occupation level. Fees for each board are established at amounts that will provide total revenues sufficient but not excessive to meet all operating and allocated expenses of the board (see § 54.1-113 and § 54.1-308 of the Code of Virginia).

Finally, DPOR was directed by VITA to purchase a COTS product to replace our legacy system. After going through the procurement process, the new product was selected based on the criteria established for the solicitation. In conclusion, DPOR cannot continue to rely on our existing, legacy system as it runs on an unsupported platform. Further, commencing another procurement to select and purchase another system would add additional expense and time to this effort with no assurance of a different outcome and would also likely involve time consuming and costly litigation in terminating the current contract.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

Part III
Fees

[Licensure Fee Notice, 1213FEE \(rev. 10/10\).](#)

VA.R. Doc. No. R09-1836; Filed October 20, 2010, 11:10 a.m.

18VAC41-60-90. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$\$\$ <u>\$75</u>	With application
License by endorsement	\$\$\$ <u>\$75</u>	With application
Renewal:	\$\$\$ <u>\$75</u>	With renewal card prior to expiration date
Reinstatement	\$140* <u>\$150*</u> *includes \$\$\$ <u>\$75</u> renewal fee and \$\$\$ <u>\$75</u> reinstatement fee	With reinstatement application
Salons:		
Application	\$90 <u>\$115</u>	With application
Renewal	\$90 <u>\$115</u>	With renewal card prior to expiration date
Reinstatement	\$180* <u>\$230*</u> *includes \$90 <u>\$115</u> renewal fee and \$90 <u>\$115</u> reinstatement fee	With reinstatement application

FORMS (18VAC41-60)

~~Salon, Shop & Parlor License Application, 12SLSHP (eff. 4/07).~~

[Salon, Shop, Spa & Parlor License Applications, 1213BUS \(rev. 10/10\).](#)

~~Body Piercer License Application, 1241LIC (eff. 4/07).~~

Body-Piercer Examination & License Application, 1241EX (eff. 4/07).

~~Body Piercer Ear Only License Application, 1245LIC (eff. 4/07).~~

[Body Piercer \(Ear Only\) License Application, 1245LIC \(rev. 10/10\).](#)

Body-Piercing Apprentice Certification Application, 1244BPAC (eff. 4/07).

[License by Endorsement Application, 1213END \(rev. 10/10\).](#)

[Reinstatement Application, 1213REI \(rev. 10/10\).](#)

Proposed Regulation

Title of Regulation: 18VAC41-70. Board for Barbers and Cosmetology Esthetics Regulations (amending 18VAC41-70-120).

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information:

December 15, 2010 - 10 a.m. - Department of Professional Occupational Regulation, 9960 Mayland Drive, 2nd Floor - Training Room 1, Richmond, VA

Public Comment Deadline: January 7, 2011.

Agency Contact: William H. Ferguson, II, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (804) 527-4295, or email barbercosmo@dpor.virginia.gov.

Basis: The proposed regulatory action is mandated by §§ 54.1-113, 54.1-201, 54.1-304, and 54.1-308 of the Code of Virginia. To comply with these statutes, the Board for Barbers and Cosmetology evaluates its current and projected financial position, and determines the type of fees and amounts to be established for each fee that will provide revenue sufficient to cover its expenses.

Section 54.1-113 requires that, following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation shows expenses allocated to it for the past biennium to be more than 10% greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses.

Section 54.1-201 describes each regulatory board's power and duty to levy and collect fees for the certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the department.

Section 54.1-304 describes the power and duty of the department director to collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board of Professional and Occupational Regulation, the regulatory boards, and the department shall be paid.

Section 54.1-308 provides for compensation of the department director, employees, and board members to be paid out of the total funds collected. This section also requires the director to maintain a separate account for each board

Regulations

showing moneys collected on its behalf and expenses allocated to the board.

Purpose: The intent of the proposed amendment is to increase licensing fees for regulants of the Board for Barbers and Cosmetology. The board must establish fees adequate to support the costs of board operations and a proportionate share of the Department of Professional and Occupational Regulation's operations. By the close of the current biennium, fees will not provide adequate revenue for those costs.

The Board for Barbers and Cosmetology provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a esthetician, master esthetician, esthetics spa, or esthetics school license, or esthetics instructor or master esthetics instructor certification, or temporary permit. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, could not be investigated and processed in a timely manner. This delay could provide an opportunity for a dishonest esthetician, master esthetician, esthetics instructor, master esthetics instructor, esthetics spa, or esthetics school waiting for action to be taken by the board, to continue to work and harm additional citizens.

The Department of Professional and Occupational Regulation receives no general fund money, but instead is funded almost entirely from revenue collected through applications for licensure, renewals, examination fees, and other licensing fees. The department is self-supporting and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide that revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The Board for Barbers and Cosmetology has no other source of revenue from which to fund its operations.

Substance: The existing regulations are being amended to increase the fees applicable to several licensing items, as follows:

Esthetician license - from \$55 to \$75.

Master Esthetician license - from \$55 to \$75.

Esthetician license by endorsement - from \$55 to \$75.

Master Esthetician license by endorsement - from \$55 to \$75.

Esthetician license renewal - from \$55 to \$75.

Master Esthetician license renewal - from \$55 to \$75.

Esthetician license reinstatement - from \$55 to \$75.

Master Esthetician license reinstatement - from \$55 to \$75.

Esthetics Instructor certification - from \$60 to \$85.

Master Esthetician Instructor certification - from \$60 to \$85.

Esthetics Instructor certification by endorsement - from \$60 to \$85.

Master Esthetics Instructor certification by endorsement - from \$60 to \$85.

Esthetics Instructor certification renewal - from \$60 to \$85.

Master Esthetics Instructor certification renewal - from \$60 to \$85.

Esthetics Instructor certification reinstatement - from \$60 to \$85.

Master Esthetics Instructor certification reinstatement - from \$60 to \$85.

Esthetics Spa license - from \$90 to \$115.

Esthetics Spa license renewal - from \$90 to \$115.

Esthetics Spa license reinstatement - from \$90 to \$115.

Esthetics School license - from \$120 to \$145.

Esthetics School to add a program - from \$60 to \$85.

Esthetics School license renewal - from \$120 to \$145.

Esthetics School license reinstatement - from \$120 to \$145.

Issues: The primary issue for the proposed fee increase is the Department of Professional and Occupational Regulation's statutory requirement to comply with § 54.1-113 of the Code of Virginia (the Callahan Act) which requires the department to review each board's expenditures at the close of each biennium, and to adjust fees if necessary. For the 2008-2010 biennium, the Board for Barbers and Cosmetology is expected to have a \$86,784 cash balance and a Callahan Act percentage of 1.5 and for the 2010-2012 biennium, the board is expected to incur a deficit of \$821,453 and a Callahan Act percentage of -13.2.

The regulatory review process generally takes a minimum of 18 months, and so it is essential to consider fee increases now, before the deficit increases to an amount greater than previously anticipated. To avoid increasing the deficit the new fees will need to become effective early in the 2010-2012 biennium. Otherwise, the board's deficit will increase to the point that the new fees would be inadequate to provide sufficient revenue for upcoming operating cycles, which could result in the board having to consider additional fee increases in the near future.

The advantage of these changes is that the regulatory program will be able to continue to function in order to protect the public. The disadvantage is that these changes will increase the cost of the license to the regulated population; however, the impact of these changes on the income of the regulated

population should not be of a great significance compared to their level of income.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Barbers and Cosmetologists (Board) proposes to raise fees for estheticians, master estheticians, esthetics instructors, master esthetics instructors, esthetics spas and esthetic schools. The Board also proposes to change the regulatory text so that it is clear that licensees who reinstate their licenses must pay a renewal fee as well as a reinstatement fee.

Result of Analysis. The benefits likely exceed the costs for one of these proposed changes. For all other changes, costs likely exceed benefits.

Estimated Economic Impact. Currently, estheticians and master estheticians pay \$55 for initial licensure (either by application or endorsement), \$55 for biennial renewal and \$110 for reinstatement. The reinstatement fee is currently listed as \$55 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Esthetics instructors and master esthetics instructors pay \$60 for initial licensure (either by application or endorsement), \$60 for biennial renewal and \$120 for reinstatement. The reinstatement fee is currently listed as \$60 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Esthetics spas must have a current facilities license in order to be open in the Commonwealth. Currently, an initial facilities license is \$90; biennial renewal of that license is \$90 and reinstatement is \$180. The reinstatement fee is currently listed as \$90 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license. Currently, esthetics schools must pay \$120 for an initial license, \$120 for biennial license renewal and \$240 for reinstatement. The reinstatement fee is currently listed as \$120 but licensees must pay both the renewal fee and reinstatement fee in order to reinstate a lapsed license.

The Board now proposes to raise fees for all categories of licensure. Under this proposal, current fees will increase between 28% and 42%. Below is a comparison table for current and proposed fees:

	FEE TYPE	CURRENT FEE	PROPOSED FEE
Estheticians Master Estheticians	Initial Licensure by Application	\$55	\$75
	Initial Licensure by Endorsement	\$55	\$75
	Renewal	\$55	\$75

	Reinstatement	\$110	\$150
Esthetics Instructors Master Esthetics Instructors	Initial Licensure by Application	\$60	\$85
	Initial Licensure by Endorsement	\$60	\$85
	Renewal	\$60	\$85
	Reinstatement	\$120	\$170
Esthetics Spas	Initial Application	\$90	\$115
	Renewal	\$90	\$115
	Reinstatement	\$180	\$230
Esthetics Schools	Initial Application	\$120	\$145
	Renewal	\$120	\$145
	Reinstatement	\$240	\$290

The Board reports that these fee increases are necessary in order to meet Callahan Act requirements for cash reserves. Specifically, the Board reports that it has incurred increasing costs for information systems development, enforcement activities, application processing and customer services over the last biennium. While it is true that raising fees will likely allow the Board to increase its revenues to meet anticipated budget deficits, licensees (and probably the public) would likely benefit more from efforts to decrease Board costs so that they more closely match current revenues.

Board staff reports, for instance, that software purchased to facilitate automation of the licensure process is a considerable and increasing expense. This new software is not a custom built product so it is anticipated that more money (beyond the initial purchase price) will have to be spent in order to allow the automation software to do what the Board needs it to do. The Board anticipates that implementation of this automated system will increase system stability but will not increase far term efficiency so that fewer employees are needed (and so that long run costs for licensees decrease). Instead more employees will likely need to be hired once the automated system is in place. Although licensees may benefit somewhat from being able to submit applications and fees online, that benefit is likely outweighed by large near-term and far-term costs for this system.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that, as of June 30, 2009, the Board licenses 2,295 estheticians, 843 master estheticians, 49 esthetics instructors, 110 master esthetics instructors, 255 esthetics spas and 43 esthetic schools. All of these entities will be affected by fee increases. DPOR also reports that most of these entities would meet the definition of small businesses.

Regulations

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Small businesses in the Commonwealth will incur the cumulative costs of licensure fees that will increase on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are several actions that the Board could take that might mitigate or eliminate the necessity of raising fees. The Board could slightly lengthen the time that it takes to process both license applications and complaints so that staff costs could be cut. This option would benefit current licensees but would slightly delay licensure, and the ability to legally work, for new applicants. Because DPOR reports that the new automated system that has been purchased is not anticipated to cut processing times or increase efficiency, and thus lower costs, in the long run; licensees would likely benefit if DPOR either reinstated their old system or found another automated system that could be expected to increase future efficiency and decrease the need for future staff increases.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected

small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: Concur with the approval. However, we do not agree with the statements made by DPB in the EIA regarding the new licensing system. As explained to DPB staff in a meeting, the new software package is being purchased to replace an unsustainable legacy system that is currently over two decades old, and operating on an unsupported operating platform created by the Digital Corporation and currently owned by Hewlett-Packard. Migration from the old system to the new system is necessitated by the need to sustain licensing operations.

The legacy system had twenty years of programming customizations built into the system, and those customizations resulted in significant automation of processes, constructing many business rules into system operations, and allowed for the development and institutionalizing of training and operating that system. The new, commercial off the shelf (COTS) solution does not include many of our automated processes, handles information differently, and has made all of the agency's staff novices at understanding and operating the system. As a result of these realities we don't expect to be operating with less staff or as efficiently in the next few years. The statement, "Instead more employees will likely need to be hired..." speaks to the operational necessity for the next few years as processes are customized, staff gains efficiency and other efforts like on line license applications are implemented to reduce staffing requirements and contribute to efficiencies. The closing sentence of this section offers the most conservative of positions where it characterizes the balancing of on line applications as being "likely outweighed." We are clearly more optimistic in hoping the continued unfolding of the new licensing system offers substantial improvements in service times, ease of access for citizens, and reduced staff time by making the licensing process paperless. Further, once the development and implementation of the new system is complete, DPOR will be provided the source code for the new system by the vendor and will be able to maintain, customize, and respond to the near certain changing requirements of our mission for decades to come.

Finally, DPOR was directed by VITA to purchase a COTS product to replace our legacy system. After going through the procurement process, the new product was selected based on the criteria established for the solicitation. In conclusion, DPOR cannot continue to rely on our existing, legacy system as it runs on an unsupported platform. Further, commencing another procurement to select and purchase another system would add additional expense and time to this effort with no assurance of a different outcome and would also likely

involve time consuming and costly litigation in terminating the current contract.

Summary:

The proposed amendments will increase fees for the Board for Barbers and Cosmetology to ensure that revenues are sufficient but not excessive to cover ongoing operating expenses. The board's most recent increase in fees became effective in July 2002. Since 2002, licensure programs have become effective for the following professions: wax technician (2004), tattooing (2006), hair braiding (2006), body piercing (2007), and esthetics (2007). The board has incurred an increase in costs for enforcement activities, information systems development costs, and application processing and customer support services. Current fees are not adequate to reduce the deficit and pay continuing operating costs. Without the proposed fee increases, the board's deficit will continue to increase and the Department of Professional and Occupational Licensing will not collect adequate revenue to pay for operations.

All costs incurred in support of board activities and regulatory operations are paid by the department and funded through fees paid by applicants and licensees. All boards within the Department of Professional and Occupational Regulation must operate within the code provisions of the Callahan Act (§ 54.1-113 of the Code of Virginia) and the general provisions of § 54.1-201 of the Code of Virginia. Each regulatory program's revenues must be adequate to support both its direct costs and a proportional share of agency operating costs. The department allocates costs to its regulatory programs based on consistent, equitable, and cost-effective methodologies.

**Part III
Fees**

18VAC41-70-120. Fees.

The following fees apply:

FEE TYPE	AMOUNT DUE	WHEN DUE
Individuals:		
Application	\$\$\$ <u>\$75</u>	With application
License by Endorsement	\$\$\$ <u>\$75</u>	With application
Renewal	\$\$\$ <u>\$75</u>	With renewal card prior to expiration date
Reinstatement	\$\$\$ <u>\$150*</u> *includes \$\$\$ <u>\$75</u> renewal fee and \$\$\$ <u>\$75</u> reinstatement fee	With reinstatement application

Instructors:		
Application	\$60 <u>\$85</u>	With application
License by Endorsement	\$60 <u>\$85</u>	With application
Renewal	\$60 <u>\$85</u>	With renewal card prior to expiration date
Reinstatement	\$120* <u>\$170*</u> *includes \$60 <u>\$85</u> renewal fee and \$60 <u>\$85</u> reinstatement fee	With reinstatement application
Spas:		
Application	\$90 <u>\$115</u>	With application
Renewal	\$90 <u>\$115</u>	With renewal card prior to expiration date
Reinstatement	\$180* <u>\$230*</u> *includes \$90 <u>\$115</u> renewal fee and \$90 <u>\$115</u> reinstatement fee	With reinstatement application
Schools:		
Application	\$120 <u>\$145</u>	With application
Renewal	\$120 <u>\$145</u>	With renewal card prior to expiration date
Reinstatement	\$240* <u>\$290*</u> *includes \$120 <u>\$145</u> renewal fee and \$120 <u>\$145</u> reinstatement fee	With reinstatement application

FORMS (18VAC41-70)

~~Salon, Shop, Spa, and Parlor License Application, 12SSSP (eff. 9/07).~~

~~School License Application, 12SCHL (eff. 9/07).~~

~~Instructor License Application, 1213INST (eff. 9/07).~~

~~Esthetician License Application, 1261-65LIC (eff. 9/07).~~

[Salon, Shop, Spa and Parlor License Applications, 1213BUS \(rev.10/10\).](#)

[School License Application, 1213SCHL \(rev.10/10\).](#)

[Instructor Certification Application, 1213INST \(rev.10/10\).](#)

Esthetician/Esthetics Instructor Examination and License Application, 1261-62 EX (eff. 9/07).

Master Esthetician/Master Esthetics Instructor Examination and License Application, 1264-65EX (eff. 9/07).

Regulations

[License by Endorsement Application, 1213END \(rev. 10/10\).](#)

[Reinstatement Application, 1213REI \(rev.10/10\).](#)

[Licensure Fee Notice, 1213FEE \(rev. 10/10\).](#)

VA.R. Doc. No. R09-1837; Filed October 20, 2010, 11:09 a.m.

EXECUTIVE ORDER NUMBER 26 (2010)

Employee Workplace Giving

Importance of the Issue

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-103 A and 2.2-104 of the Code of Virginia and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby authorize an annual Commonwealth of Virginia Campaign (CVC).

Employees of the Commonwealth have demonstrated that they share civic responsibility with other members of their communities, the Commonwealth, and the United States by contributing more than \$3.9 million for the 2009 campaign and over \$30 million since 1998. The Commonwealth of Virginia has an interest in assisting its employees in their charitable giving through the provision of a single state employee campaign that minimizes the disruption of the workplace and maximizes contributions to these organizations. This program will provide a responsive and convenient system to facilitate charitable giving. The goals of this program will be to:

1. Provide assistance to the communities and non-profit organizations in serving the needs of the community;
2. Provide an efficient and cost-effective vehicle by which state employees can voluntarily contribute to charity;
3. Recognize the generosity of the state workforce;
4. Ensure fiscal accountability;
5. Consolidate all fundraising solicitations into one campaign, and prohibit interruptions in the state workplace from outside fundraising.

The CVC will be conducted annually in all state agencies. The Director of Human Resources Management shall serve as the chairperson of the Advisory Council, who will develop and implement operating procedures for the program organization and administration. These procedures shall be in concert with the goals of the program as set forth in this Executive Order.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2014, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 1st day of October 2010.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

AIR POLLUTION CONTROL BOARD

Public Comment Period - State Implementation Plan for O-N Minerals Located in Shenandoah County

Purpose of notice: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a permit to limit air pollution emitted by a facility in Shenandoah County, Virginia. If adopted, the Commonwealth intends to submit the permit as a revision to its State Implementation Plan (SIP) in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Public comment period: October 14, 2010, through November 15, 2010.

State public hearing procedure: Interested persons may request a public hearing. The request must be made in writing to the contact listed below and be received by DEQ by the last day of the comment period. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and of all people represented by the requester. The request must also include: (i) the reason why a public hearing is requested; (ii) a brief statement setting forth the factual nature and extent of interest in the proposed permit, including how the operation of the facility affects the requester; and (iii) specific references to applicable terms and conditions of concern as well as suggested revisions. A public hearing may be held as required by § 10.1-1322.01 of the Code of Virginia if at least 25 requests are received in accordance with these procedures. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Federal public hearing procedure: Interested persons may request a public hearing. The request must be made in writing to the contact listed below, and be received by DEQ by the last day of the comment period. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and of all people represented by the requester. A public hearing will be held as required by 40 CFR 51.102(a) if a request is received in accordance with these procedures. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Permit name: State operating permit issued by DEQ, under the authority of the State Air Pollution Control Board.

Name, address, and registration number: O-N Minerals (Chemstone) Company, 1696 Oranda Road, Strasburg, VA 22657-3731, Registration No. 80252.

Description of proposal: The proposed revision is related to the control of emissions of particulate matter (PM), nitrogen oxides (NOX), and sulfur dioxide (SO₂) to the atmosphere from O-N Minerals located in Shenandoah County, Virginia.

Virginia's regional haze regulation is found in Article 52 (9VAC5-40-7550 et seq.) of 9VAC5-40, Existing Stationary Sources. This regulation provides guidance for determining Best Available Retrofit Technology (BART). BART is required for any BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to visibility impairment in any federal Class I area. BART is an emission limitation based on the degree of reduction achievable through application of the best system of continuous emission reduction for each visibility-impairing pollutant emitted by an existing stationary facility established on a case-by-case basis. O-N Minerals is subject to these requirements, has undergone a BART analysis resulting in the application of BART controls, and has obtained a state operating permit containing BART controls that was submitted to EPA as a SIP revision on January 14, 2010.

The current proposed revision consists of a mutual and final determination between the source and DEQ, signed on May 4, 2010, that the one calcimatic kiln (U-12) rated at 8.3 tons per hour of lime production is permanently shutdown. The state operating permit associated with this facility was then revised to reflect this change and signed on August 6, 2010.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters providing faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits, and documents received are part of the public record.

To review proposal: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (<http://www.deq.virginia.gov/air/permitting/planotes.html>). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 8th Floor, 629 East Main Street, Richmond, VA, telephone (804) 698-4070 and

2) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800.

For public comments, document requests and additional information, contact the staff person listed below.

Contact Information: Lois R. Paul, Program Support Technician, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7920, FAX (540) 574-7878, or email lois.paul@deq.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

October 4, 2010

Administrative Letter 2010-10

To: All Insurers Licensed and Recognized in Virginia

Re: Premium Tax and Assessment Practices and Procedures
Replacement of Administrative Letter 2009-10

This letter replaces Administrative Letter 2009-10. Pursuant to §§ 58.1-2506 and 38.2-406 of the Code of Virginia, the State Corporation Commission Bureau of Insurance has developed and requires the Virginia Tax Packet Payment Voucher (Payment Voucher) to be filed as part of the annual tax and assessment forms due March 1 of each year. The purpose of the Payment Voucher is to provide companies the ability to pay all amounts due with one check. Payments not submitted with the Payment Voucher cannot be processed by the bank. The entire Tax Packet (all tax and assessment forms and payments) will be returned to the insurer for proper filing. Penalties and interest will apply to any payments and the Late Form Filing Fine will apply to forms re-submitted after the due date. Approved software companies DO NOT have the Payment Voucher in their software. Download the Payment Voucher from our website: www.scc.virginia.gov/division/boi/webpages/boiinstaxinsurancecoinfo.htm. If you do not have access to the website, please call the Administrative Tax Unit at (804) 371-9096 to request the Payment Voucher.

The State Corporation Commission Bureau of Insurance will no longer refund monies collected as a result of companies' failure to properly complete the Retaliatory Tax Report. Companies later determining that funds were paid in error will have to apply via formal petition for the correction of taxes pursuant to § 58.1-2030 of the Code of Virginia. The application shall be by written petition, in duplicate and verified by affidavit.

Questions regarding this letter may be directed to: Keith D. Kelley, Administrative Tax Supervisor, State Corporation

Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9333.

/s/ Alfred W. Gross
Commissioner of Insurance

* * *

October 8, 2010

Administrative Letter 2010-11

To: All Companies Licensed In Virginia To Write Accident And Sickness Insurance, All Health Maintenance Organizations Licensed In Virginia, And All Health Services Plans Licensed In Virginia

Re: Virginia Small Employer Group Health Insurance Medical History Form;
Replacement of Administrative Letter 2009-04

In accordance with the provisions of House Bill 728 approved by the Virginia General Assembly during its 2008 legislative session, the Bureau of Insurance (the Bureau), with the assistance of a number of carriers and interested parties, developed the Virginia Small Employer Group Health Insurance Medical History Form to provide an optional format for facilitating and streamlining the application and enrollment process in Virginia's small employer market. A copy of the form, along with guidance for its use, was provided to carriers by Administrative Letter 2009-4, which further provided for future revision of the form as necessary and appropriate to address both regulatory changes and to meet the ongoing needs and relevance for those using the form. The attached form, identified as form # VAHLTHAPP9 10, and entitled Virginia Group Health Insurance Medical History Form, is the first revision of the form. Among other changes made at the request of carriers and other interested parties, the form was also revised to provide for its use in the large employer market as well as the small employer market, at the option of the carrier.

Provided the attached form is used in the exact format attached with no modifications except as otherwise noted below, insurers may use the form immediately without obtaining approval from the Bureau. The form is exempt from filing and approval requirements, in accordance with Virginia Code § 38.2-316 I. In order to facilitate a uniform transition to the attached revised form, carriers are strongly encouraged to discontinue use of the older version of the form by December 1, 2010.

Insurers, Health Services Plans, and Health Maintenance Organizations opting to use and accept the attached form should prepare and communicate their instructions for use and acceptance of the form to their respective agents and other interested parties. While it will generally be up to carriers to prepare and communicate instructions and guidelines for use of the form, the Bureau does expect and

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require all carriers to comply with the following general requirements:

- The full and proper corporate name of the insurer, health services plan or health maintenance organization must be recorded in Section 5 of the form. It is acceptable for a carrier to pre-print forms with the full and corporate name included, but sufficient space must be allowed for the entry of other carriers as well.
- Carriers are encouraged to include within their instructions for completion and return of the form, a prominent statement to the effect that completed forms should not, under any circumstances, be submitted to the Bureau.
- The type-size used in the form may be enlarged if a carrier so chooses, but it may not be reduced. Text may not be altered or changed.
- The form may be placed on a carrier's website or other electronic medium provided the format is not changed, or only minimal formatting changes are made to accommodate website specifications.

To the extent that future revisions to this form become necessary and appropriate, the Bureau will communicate such revisions to insurers and interested parties by Administrative Letter. To avoid confusion and facilitate uniformity in the use of each form revision, any and all new administrative letters addressing the use of this form will replace and supersede the prior administrative letter relating to the form and its use. Therefore, this administrative letter replaces Administrative Letter 2009-04 (and its attached Small Employer Group Health Insurance Medical History Form).

If you have any questions concerning the use of this form, please contact: Robert Grissom, Supervisor, Forms and Rates Section, Life and Health Division, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9152, FAX (804) 371-9944.

/s/ Alfred W. Gross
Commissioner of Insurance

Virginia Group Health Insurance Medical History Form

Section 1: To Be Completed by Employer								
EMPLOYER GROUP NAME	REQUESTED EFFECTIVE DATE							
Section 2: Employee Information								
Employee Name: _____ SSN: _____								
Employee Address: (street, city, state & zip) _____								
Name of Current Insurer/HMO: _____								
Spouse Name: _____ SSN: _____								
Spouse Address: (street, city, state & zip) _____								
Name of Current Insurer/HMO: _____								
INDICATE THE TYPE OF COVERAGE FOR WHICH YOU ARE APPLYING: <input type="checkbox"/> Employee Only <input type="checkbox"/> Employee and Spouse <input type="checkbox"/> Employee and One Child <input type="checkbox"/> Employee and Children <input type="checkbox"/> Employee and Family								
Section 3: Waiver of Coverage								
Only complete this section if you wish to decline coverage for yourself, your spouse, other adult and/or your dependents.								
I WISH TO DECLINE COVERAGE FOR: <input type="checkbox"/> Myself <input type="checkbox"/> My Spouse <input type="checkbox"/> Other Adult <input type="checkbox"/> My Dependents <input type="checkbox"/> Myself and All Dependents								
I WISH TO DECLINE COVERAGE FOR THE FOLLOWING REASON:								
<input type="checkbox"/> Covered under other group coverage. Name of Insurer/HMO: _____ Name of Insured: _____								
<input type="checkbox"/> Covered by Medicare <input type="checkbox"/> Covered by TRICARE or CHAMPVA								
<input type="checkbox"/> Other (including individual coverage) _____ <div style="text-align: center; font-size: small;">(provide details)</div>								
My employer has given me an opportunity to apply for group health coverage for myself and my dependents (if applicable). I have declined to apply for coverage as indicated above. I understand that by waiving coverage at this time, certain restrictions may apply to my ability to participate in this group insurance program at a later date.								
Signature: _____	Date: _____							
Section 4: Medical History								
Please provide the following information about each person to be covered by this policy. If you require more space than is provided, attach additional papers. If child(ren) do not reside at the same address as the employee, please provide the child(ren)'s address.								
	First Name & Middle Initial	Last Name (if different from applicant)	Gender M/F	Date of Birth mm/dd/yyyy	Height	Weight	Step Child Y/N	Court-Ordered Coverage Y/N
Employee								
Spouse								
Child								
Address if different from employee: (street, city, state & zip)								

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Employee Name: _____

Section 4: Medical History (con't.)								
	First Name & Middle Initial	Last Name (if different from applicant)	Gender M/F	Date of Birth mm/dd/yyyy	Height	Weight	Step Child Y/N	Court-Ordered Coverage Y/N
Child								
Address if different from employee: (street, city, state & zip)								
Child								
Address if different from employee: (street, city, state & zip)								
Child								
Address if different from employee: (street, city, state & zip)								
Child								
Address if different from employee: (street, city, state & zip)								
Child								
Address if different from employee: (street, city, state & zip)								
If you or your spouse are a custodial parent to any dependent listed above, indicate who:								
<i>Within the past five (5) years, have you or any other person listed on this form consulted or sought treatment, had treatment recommended, received treatment or therapy, been surgically treated, had surgery recommended, been hospitalized or taken any medication for any of the following conditions?</i>								
<i>When answering questions on this medical history form, the information provided for each individual should include only information about that individual and should not include any genetic information. Genetic information includes family medical history and information related to the individual's genetic counseling or genetic diseases for which the individual may be at risk. All responses pertaining to an individual will only be considered and applied to the individual in question.</i>								
Yes	No	Condition						
		1. AIDS (Acquired Immune Deficiency Syndrome) or HIV (Human Immunodeficiency Virus)						
		2. Alcohol abuse, substance abuse, and/or use of illicit drugs						
		3. Allergies						
		4. Aneurysm						
		5. Arthritis, rheumatism or other condition affecting one or more joints						
		6. Asthma or other lung or respiratory disorder disease, emphysema, COPD, cystic fibrosis, sarcodosis, tuberculosis						
		7. Back disorders, including disorders of the spine and intervertebral discs, and disc herniation/bulge						
		8. Blood clots, peripheral vascular disease or other circulatory or vascular disorder						
		9. Cancer or any tumor or growth						
		10. Diabetes - If yes, what type?						
		11. Elevated Cholesterol						

Virginia Group Health Insurance Medical History Form

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Employee Name: _____

Section 4: Medical History (con't.)		Condition				
Yes	No					
		12. Emotional or mental disorders, including, but not limited to, depression, manic depression, bi-polar disorder or Attention Deficit Hyperactivity Disorder				
		13. Fibroidcystic breast or other breast disorders				
		14. Fractures/Limb loss				
		15. Gall stones or any other gallbladder disorder				
		16. Gout				
		17. Head, spinal cord injuries				
		18. Heart or cardiovascular disorders, including, but not limited to, heart attack, heart murmur, irregular heart rate, valve disorders, angina or chest pain				
		19. Hemophilia, anemia, sickle cell anemia, or other blood disorder				
		20. Hepatitis – If yes, what type?				
		21. Hypertension (high blood pressure)				
		22. Intestinal disorders, including, but not limited to, diverticulitis, hernia, rectal disorders, colitis or Crohn's Disease				
		23. Kidney disorders, including, but not limited to, kidney failure, kidney stones, bladder or genitourinary diseases or disorders, polycystic kidney disease, renal failure or on dialysis				
		24. Liver disorders, including, but not limited to, cirrhosis				
		25. Lupus, scleroderma, fibromyalgia, vasculitis, or any other connective tissue disorders				
		26. Nervous system disorders, including, but not limited to, epilepsy, seizures, paralysis, multiple sclerosis, cerebral palsy, muscular dystrophy, Parkinson's Disease				
		27. Prostate, testicular, erectile dysfunction				
		28. Reproductive disorders: abnormal uterine bleeding, fibroids, menstrual disorders, endometriosis, infertility, other				
		29. Sleep Apnea				
		30. Stroke or TIA (mini stroke)				
		31. Thyroid, goiter, glandular diseases or disorders, pituitary, pancreatic, or disorder requiring growth hormone				
		32. Ulcers, acid reflux or other disorders of the stomach				
33. If you checked yes to any conditions in Section 4, please provide full details on each medical condition below.						
Question Number	Name of Person	Condition (include start date of condition)	Types of Treatment (Month/Year)	List Medications by name, dosage and give route (oral, injectable, infusion, or inhaled)	Is Ongoing Treatment Needed? If Yes, Please Explain:	Physicians Name

Virginia Group Health Insurance Medical History Form

General Notices/Errata

Employee Name: _____

Section 4: Medical History (con't.)						
Question Number	Name of Person	Condition (include start date of condition)	Types of Treatment (Month/Year)	List Medications by name, dosage, and give route (oral, injectable, infusion, or inhaled)	Is Ongoing Treatment Needed? If Yes, Please Explain:	Physicians Name

34. List any prescribed medications not otherwise identified in Section 4, number 33 (including fertility drugs) that you, your spouse, or any of your dependents listed on this form are currently taking. Use additional papers if needed.

Name of Person	List Medications by name, dosage, and give route (oral, injectable, infusion, or inhaled)	For what condition?

Employee Name: _____

Section 5: Additional Information

1. Has anyone named in this application used tobacco products within the past 12 months? If yes, explain:
2. Within the past five (5) years, have you or any other person listed on this form, consulted or sought treatment, had treatment recommended, received treatment or therapy, been surgically treated, had surgery recommended, hospitalized for, or taken medication for any medical condition or disorder not mentioned above? If yes, explain:
3. Are you or anyone listed on this form currently pregnant? If yes, Due Date:
If you checked yes, please explain:
4. Any future surgeries or treatment discussed, planned or recommended in the next 12 months? If yes, explain:

Section 6: Certification and Enrollment

In connection with this application for coverage with the insurer(s)/HMO(s) identified below, I certify that I have read, or have had read to me, this completed form, and I realize that any act or practice that constitutes fraud or intentional material misrepresentation of fact in this form may result in loss or rescission of coverage. I acknowledge that all claims relating to such fraudulent act, practice or intentional material misrepresentations of fact will become my responsibility if incurred after termination or as a result of rescission.

I understand and agree that the insurer(s)/HMO(s) identified below will rely upon the above information and answers as the basis for establishing group premium rates for health care coverage.

I authorize any physician, medical practitioner, hospital, clinic, other medical or medically related facility, insurer(s)/HMO(s) or other organization, institution or person that has any knowledge of my health or the health of my spouse and/or dependents as listed on this form to disclose such information to the extent permitted by law to the insurer(s)/HMO(s) identified below for the purpose of compiling an accurate evaluation of this form and to establish group premium rates for the group. This authorization does not permit the use or disclosure of psychotherapy notes. Authorization to disclose information for the payment of claims is valid for the term of coverage and in connection with application for coverage, policy reinstatement or a request for change in policy benefits, this authorization shall be valid for thirty (30) months from the date shown below.

I understand that I may be contacted by the insurer(s)/HMO(s) identified below to obtain additional follow-up information on health conditions disclosed in Section 4 and 5 of this document for me, my spouse and/or my covered dependents.

I understand that I or my authorized representative may receive a copy of this authorization upon request. I agree that a photographic copy of this authorization shall be as valid as the original.

Full and proper corporate name of Insurer(s)/HMO(s)

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Employee Signature: _____ **Daytime Tel. No.** _____ **Date:** _____

General Notices/Errata

October 20, 2010

Administrative Letter 2010-12

To: All Companies Licensed under Chapters 10, 11, 12, 40, 41, 42, 45 or 61 of Title 38.2 of the Code of Virginia
Re: Virginia Life, Accident and Sickness Insurance Guaranty Association
Chapter 510 of the 2010 Acts of Assembly (House Bill 448)

The purpose of this Administrative Letter is to inform life, accident and sickness companies (insurers) subject to Chapter 17 of Title 38.2 of the Code of Virginia of the disclaimer required to be attached to policies in order to comply with the provisions of Chapter 510 (House Bill 448), enacted by the Virginia General Assembly during its 2010 legislative session.

Chapter 510, effective July 1, 2010, amends and re-enacts § 38.2-1442 (Investments) and §§ 38.2-1700 through 38.2-1715 (Virginia Life, Accident and Sickness Insurance Guaranty Association) to update and expand the scope of the Guaranty Association. Pursuant to amendments in § 38.2-1715, the Guaranty Association is required to prepare and submit to the Commission for approval, a summary document describing the general purposes and limitations of Chapter 17, which includes a disclaimer that discusses limitations, exclusions, and the types of policies that are covered by the Guaranty Association.

The attached summary document entitled Notice of Protection Provided by the Virginia Life, Accident and Sickness Insurance Guaranty Association (Notice) is approved effective November 1, 2010. Beginning January 1, 2011, insurers are required to attach this Notice to policies or contracts delivered to policy or contract owners. Insurers are required to retain evidence of compliance with this Notice requirement so long as the policy or contract remains in effect.

Questions regarding this letter may be directed to: Robert Grissom, Supervisor, Forms and Rates Section, Life and Health Division, Bureau of Insurance, State Corporation Commission, telephone (804) 371-9152, or email bob.grissom@scc.virginia.gov.

/s/ Alfred W. Gross
Commissioner of Insurance

NOTICE OF PROTECTION PROVIDED BY VIRGINIA LIFE, ACCIDENT AND SICKNESS INSURANCE GUARANTY ASSOCIATION

This notice provides a **brief summary** of the Virginia Life, Accident and Sickness Insurance Guaranty Association ("the Association") and the protection it provides for policyholders. This safety net was created under Virginia law, which

determines who and what is covered and the amounts of coverage.

The Association was established to provide protection in the unlikely event that a life, annuity or health insurance company licensed in the Commonwealth of Virginia becomes financially unable to meet its obligations and is taken over by its Insurance Department. If this should happen, the Association will typically arrange to continue coverage and pay claims, in accordance with Virginia law, with funding from assessments paid by other life and health insurance companies licensed in the Commonwealth of Virginia.

The basic protections provided by the Association are:

- Life Insurance
 - o \$300,000 in death benefits
 - o \$100,000 in cash surrender or withdrawal values
- Health Insurance
 - o \$500,000 in hospital, medical and surgical insurance benefits
 - o \$300,000 in disability [income] insurance benefits
 - o \$300,000 in long-term care insurance benefits
 - o \$100,000 in other types of health insurance benefits
- Annuities
 - o \$250,000 in withdrawal and cash values

The maximum amount of protection for each individual, regardless of the number of policies or contracts, is \$350,000, except for hospital, medical and surgical insurance benefits, for which the limit is increased to \$500,000.

Note: Certain policies and contracts may not be covered or fully covered. For example, coverage does not extend to any portion(s) of a policy or contract that the insurer does not guarantee, such as certain investment additions to the account value of a variable life insurance policy or a variable annuity contract. There are also various residency requirements and other limitations under Virginia law.

To learn more about the above protections, please visit the Association's website at www.valifeqa.org or contact:

VIRGINIA LIFE, ACCIDENT AND SICKNESS INSURANCE GUARANTY ASSOCIATION	STATE CORPORATION COMMISSION
c/o APM Management Services, Inc.	Bureau of Insurance
8001 Franklin Farms Drive, Suite 235	P.O. Box 1157
Henrico, VA 23229	Richmond, VA 23218
(804) 282-2240	(804) 371-9741
	Toll Free Virginia only:
	1-800-552-7945
	http://www.scc.virginia.gov/division/boi/index.htm

Insurance companies and agents are not allowed by Virginia law to use the existence of the Association or its coverage to encourage you to purchase any form of insurance. When selecting an insurance company, you should not rely on

Association coverage. If there is any inconsistency between this notice and Virginia law, then Virginia law will control.

DEPARTMENT OF ENVIRONMENTAL QUALITY (DEQ)

Enforcement Action for B&J Enterprises L.C.

An enforcement action has been proposed for B&J Enterprises L.C. for violations in Montgomery County, Virginia. The Special Order by Consent will address and resolve violations of environmental law, regulations, and B&J's VPDES permit for the Blacksburg Country Club STP. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email at jerry.ford@deq.virginia.gov, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from November 9, 2010, to December 8, 2010.

Total Maximum Daily Loads for Browns Run

DEQ and the Department of Conservation and Recreation seek written and oral comments from interested persons on the development of an Implementation Plan (IP) for bacteria total maximum daily loads (TMDLs) on a 2.39 mile stream segment of Browns Run, 3.61 mile segment of Craig Run, and a 8.16 mile segment of Marsh Run in Fauquier County. The TMDLs for these stream impairments were completed in January 2008 and can be found in the Upper Rappahannock River Basin Report on DEQ's website at <http://www.deq.virginia.gov/tmdl/apptmdls/rappvr/urappaec.pdf>.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts.

The second public meeting on the development of the IP for the bacteria TMDLs will be held on Tuesday, November 16, 2010, at 7 p.m. at the Cedar Lee Middle School, 11138 Marsh Road (Route 17), in Bealton, Virginia. At this meeting, the draft implementation plan to restore surface water quality in Browns Run, Craig Run, and Marsh Run will be presented to the public.

The 30-day public comment period on the draft implementation plan will begin on November 16 and will end on December 15, 2010. A fact sheet on the development of an IP for the Browns, Craig, and Marsh Runs is available upon request. Questions or information requests should be addressed to Bob Slusser at the Virginia Department of Conservation and Recreation. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be

sent to Bob Slusser, Department of Conservation and Recreation, email bob.slusser@dcr.virginia.gov, telephone (540) 351-1590.

Announcement of Public Meeting for Implementation Planning Meetings for the James River and Tributaries Bacteria Impairments in Richmond City, and Chesterfield, Henrico, and Powhatan Counties, Virginia

Public meeting: A public meeting will be held on Tuesday, November 16, 2010, to "kick-off" the Implementation Planning (IP) phase of the James River – City of Richmond total maximum daily load (TMDL) study. An evening meeting will be held at 6 p.m. at the Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060.

Purpose of notice: DEQ will host a public meeting to provide an overview of the IP process that will incorporate results of the recently completed TMDL study. A 30-day public comment period beginning on November 17, 2010, and ending on December 27, 2010, will allow preliminary stakeholder input for the IP development.

Meeting description: DEQ seeks to gain interest of all watershed stakeholders as part of the Implementation Planning process. The goal of the IP process is to outline a plan for reaching the reduction goals of the completed TMDL study. The plan will identify the types and areas where best management practices may be placed in order to mitigate the bacteria pollution in the waterways. The plan will also identify funding opportunities and estimate the costs of remedial efforts. This is the first public meeting for the IP process and will be followed by work-group meetings and steering committee meetings. Work-groups will be comprised of voluntary members for specific watershed stakeholder groups (residential, business, agricultural, government, etc.) and will meet to discuss watershed issues, identify opportunities for mitigation, and provide suggestions for the overall IP. There will be work-group sign up sheets at the "kick-off" meeting for those who would like to participate. The steering committee will meet in order to shape the IP document by analyzing, organizing, and formatting the information compiled from work-group suggestions and will be comprised of members who volunteer or are nominated from the work-groups.

Description of plan: Virginia agencies developed a study to identify sources of the bacterial contamination in the waters of the James River and its tributaries in the following jurisdictions:

General Notices/Errata

Stream	County/City	Length (mi.)	Impairment
Bernards Creek	Chesterfield, Powhatan	6.95	Bacteria (Primary Contact Use)
Powwhite Creek	Chesterfield, Richmond City	8.13	
Reedy Creek	Richmond City	3.69	
James River	Richmond City	2.99	
Gillie Creek	Richmond City, Henrico	5.75	
Almond Creek	Henrico	2.08	
Goode Creek	Richmond City	1.22	
Falling Creek	Chesterfield	3.10	
No Name Creek	Chesterfield	2.07	
James River	Chesterfield, Henrico, Richmond City	6.75	

These streams are impaired for failure to meet the primary contact (recreational) designated use because of bacteria standard violations. The study reported the sources of bacterial contamination and recommended TMDLs for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, bacterial levels have to be reduced to the TMDL amount. The report, which was submitted to EPA on September 30, 2010, is available on the DEQ website: <http://www.deq.virginia.gov/tmdl/drftmdls/jamesg3.pdf>.

Plan development: The development of an Implementation Plan includes a minimum of two public meetings and two public comment periods prior to submitting the final draft IP to the State Water Control Board for approval. Implementation plan development is required by Virginia state law under the Water Quality Monitoring, Information, and Reporting Act (WQMIRA).

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, which will begin on November 17, 2010, and end on December 27, 2010.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804)-527-5106, or email margaret.smigo@deq.virginia.gov.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on October 20, 2010, and October 21, 2010. The order may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the

Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Eighty-Six (10)

Virginia Lottery's "University of Virginia Playbill JPJ Concert Sweepstakes" Final Rules for Game Operation (effective October 20, 2010)

Director's Order Number Eighty-Seven (10)

Virginia Lottery's "University of Virginia Playbill Discover Orange Bowl Sweepstakes" Final Rules for Game Operation (effective October 20, 2010)

Director's Order Number Ninety-One (10)

Virginia Lottery's "Winner Wednesdays Sweepstakes" Final Rules for Game Operation (effective October 20, 2010)

STATE WATER CONTROL BOARD

Proposed Enforcement Action for American Marine Group, Inc.

An enforcement action has been proposed for American Marine Group, Inc., for alleged violations of the State Water Control Law concerning the unauthorized discharge of oil to state waters in the City of Norfolk. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Paul R. Smith will accept comments by email at paul.smith@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA 23462, from November 8, 2010, to December 8, 2010.

Proposed Enforcement Action for the Town of Clifton Forge

An enforcement action has been proposed for the Town of Clifton Forge regarding the town's wastewater collection system, for violations of the State Water Control Law. The proposed enforcement action requires corrective action. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from November 8, 2010, to December 8, 2010.

Proposed Enforcement Action for Dare to Care Charities, Inc.

An enforcement action has been proposed for Dare to Care Charities, Inc. (DTCC) regarding the DTCC wastewater treatment plant, for violations of the State Water Control Law. The proposed enforcement action requires corrective action. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or

postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from November 8, 2010, to December 8, 2010.

Proposed Enforcement Action for the Town of Kenbridge

An Order by Consent has been proposed for the Town of Kenbridge for violations at the Town of Kenbridge Sewage Treatment Plant and Sanitary Sewer Collection System. The order contains a Schedule of Compliance that details the corrective action required and a timeline for completion. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. G. Marvin Booth, III will accept comments by email at marvin.booth@deq.virginia.gov, FAX (434) 582-5125 or postal mail at Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, from November 8, 2010, to December 9, 2010.

Proposed Enforcement Action for Loudoun County Sanitation Authority

An enforcement action has been proposed for the Loudoun County Sanitation Authority for alleged violations in Loudoun County at the Courtland Rural Village Water Reclamation Facility. The proposed consent order describes a settlement of violations of Virginia Pollutant Abatement Permit No. VPA00010. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Sarah Baker will accept comments by email at sarah.baker@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from November 9, 2010, through December 8, 2010.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at <http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi>.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions, and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track, and emergency regulatory packages.

ERRATA

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-210; adding 12VAC30-20-211).**

Publication: 27:4 VA.R. October 25, 2010.

Correction to Notice of Extension of Emergency Regulation:

Page 504, change Title of Regulation to: 12VAC30-20. Administration of Medical Assistance Services (amending 12VAC30-20-210; adding 12VAC30-20-211).

VA.R. Doc. No. R10-2021; Filed

